POLICE COLLECTIVE BARGAINING AGREEMENTS

A NATIONAL MANAGEMENT SURVEY

(Revised and Expanded Edition)

Steven B. Rynecki
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NATIONAL LEAGUE OF CITIES

POLICE EXECUTIVE RESEARCH FORUM

The Police Executive Research Forum is a national organization of chief executives of city, county, and state police agencies. The Forum's goal is to improve the delivery of police services through professionalization of police executives and officers, development of new knowledge through research and experimentation, and thoughtful, open debate on all criminal justice issues.

The National League of Cities, a not-for-profit corporation founded in 1924, is a major national organization composed of approximately 15,000 municipalities and 49 state municipal associations. With a distinguished tradition of service in urban policy leadership, the National League of Cities speaks and acts for the nation's cities in the formulating, debating, and implementing of national domestic policy and seeks to safeguard and enhance the capacity of municipal government to serve its citizens.

The National League of Cities Public Employer-Employee Relations Service (NLC-PEERS) focuses on labor-management relations services, including legislative and administrative lobbying, an information clearinghouse, educational programs, technical assistance, and research and analysis.

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Library of Congress Catalog Card No. 81-22565

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ACKNOWLEDGEMENT

This study was conducted jointly by the Police Executive Research Forum and the National League of Cities. Gary P. Hayes, Executive Director of the Forum, and Frank Forbes, Director of NLC-PEERS, managed the survey, analysis and preparation of this report. Margaret Beckham of the National League of Cities helped shape the final product by her countless hours of editing, making our thoughts clearer and more readable, and correcting many of the mistakes inevitable in a large survey of this nature. Mayor William Hudnut III of Indianapolis, president of the National League of Cities along with Sheriff John F. Duffy of San Diego County Sheriffs Department, president of the Police Executive Research Forum, and former Chief Bruce R. Baker, of the Portland (Oregon) Bureau of Police, the Forum's past president, have supplied continued encouragement for this survey's goals.

There were many others who were instrumental in bringing this new study to fruition. The predecessor to this study had been conducted in 1976 by Mr. Rynecki, and by Donald and Douglas Cairns. To the extent that the authors have relied on or taken information from this study, they wish to extend their deepest appreciation to Donald and Douglas Cairns. A special acknowledgement must also be extended to Attorney Thomas Skowronski, who was instrumental in gathering the statistics necessary for and drafting the master chart. An acknowledgement must also be made for the assistance given by the law clerks of von Briesen & Redmond, S.C., of Milwaukee, Wisconsin, who assisted with the gathering of statistics: Susan Bickert, Karen Duke, Matthew Huppertz, Joseph Jensen, and Russell Van Skike. In this regard, special acknowledgement must be given to Karen Duke, Matthew Huppertz, and Joseph Jensen, who were of particular assistance on preliminary drafts of certain sections. Finally, a special appreciation is extended to Linda Osterlie, who spent countless hours typing and retyping the drafts of this study, and helped make the study less technical and more readable.

Finally, the efforts involved in collecting and analyzing the data in this study would not have been possible without the cooperation of the individual cities and police departments that provided copies of their collective bargaining agreements.

We deeply appreciated the time and effort contributed by those mentioned above, and realize that this survey would not have been possible without their help. It is our hope that any credit for this study be distributed among the people named above. We, of course, accept full responsibility for the interpretations and ideas contained herein.

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November, 1981

PREFACE

What we stated in the original volume three years ago is still true today: "One of the major challenges facing local government officials in recent years has been to deal with the rapid growth of police unionism. The police service, in large measure, has lagged behind many other groups in public service in organizing itself into collective bargaining units. As a result, local government officials are only now having to deal with police unionism the way they have had to deal with other organized employee groups in the past."

Today, police management faces even more pressure as cities are under increasing pressure to deliver police services in the most productive way possible. The demands for better police and municipal management escalate along with increased efforts to control costs. In this day of cutback management, propositions 2-1/2 and 13, public employee strikes, compulsory binding interest arbitration, civilianization, sky-rocketing police pension costs and related problems, collective bargaining becomes more critical than ever for those jurisdictions involved. Police unions continue to be concerned with sharing with management, decisions which were once the sole prerogative of management. Demands from unions that they be allowed to influence department decisions and shape the department's efficiency and effectiveness goals raise the question as to who really makes police agency decisions. If city and police officials don't share similar objectives and agree on the means for meeting these objectives with union leaders, conflict is likely. Issues where these differences usually arise are reflected throughout this study. In this new edition, we have expanded treatment of the "Police Officer Bill of Rights," and added chapters on "Minimum Staffing," and emphasized "Reduction in Force" issues, as many cities are forced to reduced their workforce.

This survey was designed to alert elected city and county officials, appointed managers, and police officials to the rapid change in the nature of police contracts and to help them identify and resolve key issues. Only by sharing information will jurisdictions be able to find the answers, and provide the enlightened management, necessary to cope with the difficult years ahead. By learning from each other we can hopefully minimize union conflict and avoid repeating the mistakes of others.

In the past, management negotiators did not enter bargaining sessions with a list of their own goals, but rather limited their negotiating strategy to holding down concessions to police unions as much as possible. This reactive posture almost eliminated the need for comparative information about the nature of police contracts in other jurisdictions. Now, however, as management finds itself stymied by concessions it has made in earlier contracts with unions, local officials and police managers realize that they must adopt a more active approach to negotiating. The need of these officials and managers now is for information about how other jurisdictions are dealing with the contract problems they face.

Against such a setting, the National League of Cities and the Police Executive Research Forum undertook this revised and expanded study of police collective bargaining contracts. Like the first edition, referred to as "the earlier study", the goal is to provide elected leaders and appointed officials with the current state of the art in police negotiations. It brings together 140 collective bargaining agreements from over 100 jurisdictions so that local government officials and police administrators have available a practical source of information about what is being hammered out in collective bargaining sessions affecting the police. The report provides examples of contract language for many different agreements and an analysis of the implications for management decisionmaking for 17 common contract clauses. The accompanying charts and commentary note national trends of union demands and management practices.

The results of the analysis of each contract received are displayed in the Comprehensive Chart at the back of this book. In many chapters, a chart displays the frequency of major types of clauses in the sample.

Users of this book should remember that collective bargaining agreements must be taken as a

whole; those interested in clauses dealing with transfers, for example, will develop a better understanding of the subject by reading the chapters on seniority, rules and regulations, and reductions in force as well as the chapter that deals specifically with transfers and assignments. This principle also applies to the examples of contract language used for illustration. The authors do not make judgments on what is a "good contract" or a "bad contract" based on its language alone, because a "good" contract is one that satisfies the needs of both parties and provides the framework for a good employer-employee relationship. Isolated examples of contract language are not sufficient to evaluate the effectiveness of a particular contract, but experience demonstrates that certain language is preferable for management.

Similarly, there is no single "right way" to approach labor relations—only strategies that have worked. Before a public employer seeks to make massive changes in a collective bargaining agreement, the entire management team—elected officials, administrators, department heads, and supervisors—must be prepared for the consequences. Having extensive experience in police labor management relations, NLC-PEERS and PERF are available to assist public employers in their efforts in this area.

In sum, this volume is a reference tool for management officials as they bargain with police unions.

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AUTHOR'S INTRODUCTION

To The First Edition

Collective bargaining is quickly becoming a major part of police management in our nation: Cities and counties of all sizes are being confronted with bargaining demands and are signing agreements with representatives of police officers. The sponsors of this study were interested in knowing the nature of these collective bargaining agreements. More particularly, the goal of this project is to survey 98 recent police contracts in cities with populations of more than 100,000, with an eye toward how certain critical elements of those agreements limit police management. Thus, the information in the survey reflects a management point of view.

This survey of contract clauses is designed to be of value to elected leaders and appointed officials involved or interested in police collective bargaining. It is *not* an introductory text about police management or police labor relations. Neither is it a definitive analysis of individual contracts. Such an analysis would require including arbitration awards and judicial decisions, and would require knowledge of each police department's traditions and practices. Rather, it is a pragmatic review of selected clauses from collected police labor contracts which, in the authors' experience, most concern police managers.

This report is designed to be integrated into the working environment of police bargaining as a management tool that provides data and analysis about certain types of clauses existing in collective bargaining agreements in larger cities. The authors, management attorneys practicing in the public sector, have approached this survey with a distinct management bias, on the assumption that management is interested in contract language that allows maximum discretion and flexibility. This assumption governed the selection of the clauses covered (although future studies should include additional topics) and is the basis for judgments about the relative merits of the language reviewed.

Management essentially is a process of decisionmaking; collective bargaining essentially is a process of *shared* decisionmaking. Conflict between aggressive management (interested in implementing new and better ways of providing police services) and the bargaining process is inevitable. In the best of worlds, the police manager would prefer to make decisions in an unfettered manner, but in the bargaining world, many important decisions must be cleared by the police officers' representative. The manager's goal is to obtain an agreement that meets both the need to make bargains and the desire to make decisions with minimum expense and time. Because the impact of collective bargaining on management freedom is so extensive, it is important to draft carefully and negotiate artfully a contract that protects the vital interest of police management.

The observations of George Morris, director of labor relations for General Motors, come to mind in reviewing police contracts.

> . . . An important consideration is too often overlooked in evaluating the results of collective bargaining settlements. It is the effect of the resolution of all the union's demands—not just wage demands—on the ability of the company to realize the full benefits of technological change and to operate its plants efficiently.
>
> The results of a particular settlement cannot be fairly evaluated simply by computing the annual percentage increase in wage and benefit costs.
>
> Restrictive, featherbedding provisions can be as costly in the long run and even more damaging to the company or industry and the economy as wage increases that exceed the national productivity advance. Experience is overpowering that once unwise concessions are made, they are considered by union leaders and members alike as vested rights never to be relinquished.

These observations also apply to the public sector, and indicate why responsible police managers should strive to protect the ability to manage their departments efficiently.

This study attempts to analyze how various jurisdictions have tried to balance the potentially conflicting interests of management and labor in the delivery of police services. The analysis of the many agreements included in this study concerns the critical elements common to most police collective bargaining agreements and whether the language of these elements unduly limits the legitimate prerogatives of police managers. Although some clauses in included contracts may have changed as a result of renegotiations, the overall examination and trends delineated are accurate. The analysis is based on both the frequency of occurrence of such language and its many variations, and indicates the inadequacies of certain clauses, the dangers of others, and the merits of more preferable, recommended language.

On important subjects, the variations in clauses have been ranked in order of preferability, with a discussion of why certain contract language is more desirable, in terms of police management, than other language. Typical contract language that is potentially useful is quoted for the reader's benefit.

Case citations appear only when necessary to illustrate and support an important point. In addition, a selected bibliography is included as an appendix to aid those who would engage in further research.

CHAPTER 1

MANAGEMENT RIGHTS

The goal of effective public sector labor-management relations is to negotiate an agreement which properly balances employee interests (job security, wages, hours and working conditions) with the interest of the employer in retaining the maximum amount of discretion in making and implementing decisions which enhance productivity and other government goals. Balancing these interests does not involve a fixed set of factors mechanically applicable in every case; rather, it involves a constantly changing composition of variables used to measure the perceived needs of the parties. Most important among the needs of the public sector employers is the ability to take actions unilaterally that are necessary to ensure the delivery of public services in an efficient and cost effective manner. This authority and ability to make and implement decisions unilaterally in order to carry out the function of managing the public enterprise has often been called "management rights."

The ability to make necessary changes often depends on the degree of flexibility management retains in a collective bargaining agreement. Employee satisfaction with wages, hours, and working conditions contributes to good morale; however, city management should be able to introduce changes that will increase efficiency, without undue interference from employee organizations. Some agreements prohibit public employers from taking direct or indirect action that affects bargaining unit employees and concerns negotiable topics unless union representatives agree to the change. Such approval can mean additional concessions by management, resulting in higher operating costs or further limits on managerial authority.

In an effort to protect important managerial decisions from challenge—through the grievance arbitration machinery of a collective bargaining agreement or from the legislated duty to bargain—employers strive for agreement provisions which deter or defeat union challenges to management decisions. Provisions protecting management rights and legal opinions regarding them vary considerably. Some believe a specific management rights clause is not necessary to protect the employer's authority, or that general language is acceptable for such clauses. Others favor an extensive and all inclusive management rights clause.

Opinions favoring no clause or one with general language are usually based on the theory of "residual" management rights. Under this theory, management retains all rights except those specifically relinquished in the collective bargaining agreement and "need not look to the collective agreement to determine what rights it has reserved to itself, but . . . only to determine what rights it has ceded away or agreed to share with employees."[1] Many holding this belief question whether any rights need be specified when management retains all rights not covered in the collective bargaining agreement. Under the theory that specifying one right excludes others, some also argue that if certain management rights are listed, other rights which are not listed may be compromised.

"Unequivocally clear language, without qualifications or exceptions, is the best protection of the employer's decision-making authority."

Many management representatives now favor a more extensive and detailed management rights clause in collective bargaining agreements which specifies as fully as possible the matters over which management retains full discretion.[2] It has been argued that a detailed, all inclusive management rights clause has several advantages over its more general counterpart. First, a comprehensive, detailed list of management rights may often strengthen an employer's position during arbitration. It may also permit the employer to act unilaterally in specific instances. Finally, during the term of an agreement which contains a detailed, all inclusive management rights clause the employer may not be required to bargain about some changes upon which, in the absence of such clause, he might otherwise be compelled to bargain.[3]

The right to act unilaterally, however, should be clearly set out in the agreement. If it is not, the employer may have to rely on either an arbitrator's interpretation that a particular action was within management's inherent or residual rights, or on decisions determining whether management acted reasonably by taking the action in question.

The large majority, 89 percent, of the agreements studied contained a management rights clause. While it is advisable to have a management rights clause in the bargaining agreement, the absence of a clause does not necessarily mean that a public employer retains little or no managerial authority. For example, a collective bargaining agreement may not contain a management rights clause, but it also may not contain a grievance arbitration clause or any other clauses limiting management. The net result is that management may have the freedom it needs without a management rights clause, although that case would be an exceptional one.

For purposes of analysis, the clauses were divided into five categories. Among these categories, no single type of clause was used in a majority of agreements. The following is an analysis of the management rights clauses according to category.

TYPE I: STRONGEST

Management rights clauses falling within the Type I category appear in 10 percent of the agreements studied. This type of clause is the type which often best protects the public employer. It has three important advantages:

- It protects all residual managerial rights not mentioned in the collective bargaining agreement.
- It specifies other rights, many of

which are important to effective police department operation.

- Most important, it provides that the grievance arbitration procedure contained in the agreement cannot limit management's exercise of enumerated rights.

The following is a model Type I clause:

> It is understood that the management and the direction of the working force is vested exclusively in the City as the Employer except as specified in the other Articles of this Agreement. It is the City's right to hire, demote, suspend or discharge for just cause; retire, layoff, promote, assign or tranfer employees to any job or any work, any time or any where; to increase or decrease the working force; to determine the number and size of the work shifts; to determine the number of employees assigned to any work or any job; to determine the hours of work per day or week; to make reasonable work rules for the purpose of efficiency, safe practices and discipline; to establish reasonable performance standards and to review employees under these standards; to determine the equipment to be used; to make technological changes; to determine the number and location of its offices; to move, close or liquidate its offices in whole or in part; to separate or reassign its employees in connection with said moving, closing or liquidating; the right to transfer; to subcontract work; to establish new jobs and the wage rates for them; to determine the duties and production standards; to combine jobs; to eliminate classifications of work; to require overtime work; and to select employees for overtime.
>
> The rights and powers of management mentioned in this Memorandum do not list or limit all such powers, and the rights listed together with all other rights, powers and prerogatives of the City, not specifically ceded in this Agreement remain vested exclusively in the City.
>
> The exercise by the City of, or its waiver of, or its failure to exercise its full right of management or decision on any matter or occasion, shall not be a precedent or be binding on the City, nor the subject or basis of any grievance, not admissible in any arbitration proceeding. The City's right of management shall not be amended or limited by any claimed or unwritten custom, past practice or informal agreement, nor by any claim the City has claimed or condoned or tolerated any practice or any act or acts of any employees.
>
> Nothing in this Article shall abrogate or alter the other Article of this Agreement. (Memphis, Tennessee, and the Memphis Police Association.)

The language of this clause is artfully drafted to limit undue encroachment on management decisions. The potential for encroachment is created by the typical grievance arbitration machinery of a collective bargaining agreement. If a management decision can be upset by an arbitrator who superimposes his or her judgment on that of the manager, then an imperfect decision-making environment exists, causing doubt about which decisions must be cleared with the union and which can be made unilaterally.

The best situation for police managers is one in which the collective bargaining agreement provides no significant limitations on decisions necessary to meet the changes believed necessary by management or required by elected and appointed city officials. This clause goes as far toward allowing this flexibility as any analyzed in this study. First, the city has reserved all residual management rights. In addition, the first paragraph of the clause recites an extensive list of specific rights retained in such a way as to avoid a potentially troublesome application of the theory that the specification of some rights implies the exclusion of all others. This is because of the language in paragraph 2 of the clause which states that "[t]he rights and powers of management mentioned in this Memorandum *do not list or limit all such rights . . .*" The following rights specified in the clause give management significant flexibility:

1. Freedom to create, modify, or delete rules and regulations.
2. Freedom to subcontract work.
3. Freedom to determine and change department structures and reduce the work day or work week.
4. Freedom to assign work and overtime.
5. Freedom to transfer, assign and schedule employees.
6. Freedom to increase or decrease the size and composition of the workforce.

MANAGEMENT RIGHTS CLAUSES

	Number	Percent
Contracts with strong clauses listing extensive rights that are not grievable (Type I)	14	10
Contracts with comprehensive clauses, which imply that use of rights may be grievable (Type II)	20	14
Contracts with specific clauses, listing fewer rights and implying their use may be grievable (Type III)	45	32
Contracts using residual rights (Type IV)	16	11
Contracts specifically stating that management rights may be subject to grievances or negotiation (Type V)	17	12
Contracts with other management rights clauses	13	9
Contracts not referring to management rights	15	11

In addition, the clause further insulates management decisions from the veto power of employee organizations by noting that the employer's exercise or waiver of or failure to exercise fully its management rights cannot be "the subject or basis of any grievance, nor admissible in any arbitration hearing." This language provides a basis for arguing that the grievance arbitration machinery is applicable only to specific contract provisions other than the management rights clause. This distinction is important to an arbitrator because he or she may not care to risk judicial nullification of an award that exceeds jurisdictional boundaries of the contract.

Finally the clause also prevents undue encroachment on management decision-making powers through the use of isolated incidents to claim that management has waived its rights by employer action or inaction. This protection is afforded by the language that the "waiver" by the employer of its "right of management or decision on any matter or occasion, shall not be a precedent or be binding on the City . . . ." Further protection in this regard can be found in the language stating that the employer's management rights were not limited by "any claimed or unwritten custom, past practice or informal agreement, nor by any claim the [employer] has claimed or condoned or tolerated any practice or any act or acts of any employees."

Another example of a Type I management rights clause is the following:

> The Department shall retain the sole right and authority at its discretion to maintain the order and efficiency of the public service entrusted to it, and to operate and manage the affairs of the Metropolitan Police Department in all aspects including, but not limited to, all rights and authority held by the Department prior to the signing of this agreement, except here abridged by a provision or provisions of this agreement. Such management rights shall not be subject to the negotiated grievance procedure or arbitration. The Union recognizes that the following rights, which are in no way wholly inclusive, belong to the Department exclusively:
>
> 1. To direct employees of the Department.
>
> 2. To determine the mission, budget, organization, number of employees, number, type and grade of employees assigned, the work project, tour of duty, methods and processes by which such work is performed, technology needed, internal security practices, relocation of facilities, etc.
>
> 3. To relieve employees for lack of work or other legitimate reasons.
>
> 4. To hire, promote, transfer, assign and retain employees in positions within the Department.
>
> 5. To suspend, demote, discharge, grant or deny step increases, and take such other disciplinary actions as determined by management to be appropriate for just cause.
>
> 6. To take any action necessary to carry out the mission of the Department, and to alter, rearrange, change, extend, limit or curtail its operations or any part thereof.
>
> 7. To determine the qualifications of employees for appointment, promotion, step increases, etc., and to set standards of performance, appearance and conduct.
>
> 8. To formulate, change or modify Department rules, regulations and procedures, except that no rule, regulation or procedure shall be formulated, changed or modified in a manner contrary to the provisions of this Agreement.
>
> 9. It is understood that in the exercise of such rights by management the practical impact of management's decision on the employees in the bargaining unit is within the scope of collective bargaining.

This second example, while quite similar to the model used above, is not quite as strong a clause as the model itself. The key limitation in the second clause is in paragraph 9 providing:

> It is understood that in the exercise of such rights by management the practical impact of management's decision on the employees in the bargaining unit is within the scope of collective bargaining.

The effect of this clause could provide a significant limitation on the exercise of management rights, since the employer may be required to negotiate with the union before implementing policy decisions.

Unequivocally clear language, without qualifications or exceptions, is the best protection of the employer's decision-making authority. Such language should provide that the exercise of management rights (specified or not) is not in any way, directly or indirectly, subject to grievance and arbitration procedures. Well-written language provides a basis for arguing that the grievance and arbitration procedures apply only to contract provisions other than the management rights clause. This argument should cause arbitrators to remain within contractually created jurisdictional boundaries. Disregarding those boundaries may lead to award nullification by a reviewing court.

Attention should also be paid to the negotiations involved in obtaining a Type I clause, which is the most desirable management rights clause for public employers. The National Labor Relations Board (NLRB) has held consistently that private sector employers commit an unfair labor practice (bargaining in bad faith) when they insist on an all-encompassing management rights clause combined with limitation on matters subject to grievance and arbitration procedures. Employers should be familiar with related rulings by their public employment relations boards, which often rely on NLRB precedents, to avoid legal challenges.

TYPE II: COMPREHENSIVE

The Type II clause appeared in about 14 percent of the agreements. It is quite similar to the Type I clause in that it includes an extensive list of rights reserved to the employer. A key characteristic of the Type II clause and the chief distinction between it and the Type I clause is that the Type II clause does not contain language specifically excluding the application of grievance and arbitration procedures to the exercise of management rights. If an agreement containing a Type II clause also provides grievance and arbitration procedures, public employers should recognize the very real possibility that their unilateral use of such rights may be subject to significant union challenges.

The following is an example of a Type II clause:

> The City, on its own behalf and on behalf of its electors, hereby retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Michigan and of the United States, the City Charter, the Lansing Code and any modifications made thereto, and any resolution passed by City elected officials. Further, all rights which ordinarily vest in and are exercised by employers except such as are specifically relinquished herein are reserved to

and remain vested in the City, including but without limiting the generality of the foregoing the right (a) to manage its affairs efficiently and economically, including the determination of quantity and quality of services to be rendered, the control of materials, tools and equipment to be used, and the discontinuance of any services, material or methods of operation; (b) to introduce new equipment, methods, machinery or processes, change or eliminate existing equipment and institute technological changes, decide on materials, supplies, equipment and tools to be purchased; (c) to sub-contract or purchase any or all work, processes or services, or the construction of new facilities or the improvement of existing facilities; (d) to determine the number, location and type of facilities and installations; (e) to determine the size of the work force and increase or decrease its size; (f) to hire, assign and lay off employees, to reduce the work week or the work day or effect reductions in hours worked by combining lay-offs and reductions in work week or work day; (g) to permit municipal employees not included in a bargaining unit to perform bargaining unit work when in the opinion of management this is necessary for the conduct of municipal services; (h) to direct the work force, assign work and determine the number of employees assigned to operations; (i) to establish, change, combine or discontinue job classifications and prescribe and assign job duties, content and classification, and to establish wage rates for any new or changed classifications; (j) to determine lunch, rest periods and cleanup times, the starting and quitting time and the number of hours to be worked; (k) to establish work schedules; (l) to discipline and discharge employees for cause; (m) to adopt, revise and enforce working rules and carry out cost and general improvement programs; however, no rule or regulation or memorandum shall be adopted hereafter without notice to the Lodge, and its reasonableness may be subject to the grievance procedure; (n) to transfer, promote and demote for just cause employees from one classification, department or shift to another; (o) to select employees for promotion or transfer to supervisor or other positions and to determine the qualifications and competency of employees to perform available work; (p) take whatever action is reasonably necessary to carry out any and all of the City's services in emergency situations; (q) the City and the Lodge shall work together in the interest of maintaining and improving efficiency in all municipal operations, the conservation of materials, supplies, equipment, the improvement in quality of workmanship and service and the correction of conditions making for grievances and misunderstandings. Further, the Lodge agrees to do its utmost to see that its members perform their respective duties loyally and continuously under the terms of this Agreement, and will use its best endeavors to protect the interest of the City, to conserve property, protect the public and give service of the highest quality. The Lodge and the City consider themselves mutually responsible to improve the public service through the creation of improved employee morale and efficiency. In this connection, the parties shall encourage employees to conduct themselves on the job in a workmanlike manner.

The City agrees the rights of the Lodge are specifically listed herein, that all subjects not specifically listed herein are retained by the City.

This clause both reserves the residual rights of management and specifies those areas of authority that remain solely with the employer. The language used to define each right provides details that extend the employer's authority in specified areas. Exercise of many rights listed above can involve not only creation or modification, but also termination of something that exists currently. Thus, if a rule, work standard, or city operation proves unmanageable, ineffective, or inefficient, an employer has the authority to make changes that are consistent with contractual rights.

The impact of a unilateral management decision on bargaining unit employees may require negotiation with the union. Unless the union has specifically waived its right to further bargaining over particular subjects, relevant bargaining statutes may mandate negotiation. This emphasizes the importance of excluding the exercise and impact of management rights from grievance arbitration procedures. Because of the grievability inherent in a Type II clause, even a well-drafted provision (such as the example above) may not prevent union challenges to unilateral management actions.

If a right has been negotiated and retained specifically by management, however, and if no other contract language modifies that right, management is in a strong position to resist challenges to decisions made under the terms of a Type II clause.

Arbitrators, courts, and agencies interpreting management rights clauses do not necessarily uphold ambiguous references to employer rights. The standards of review are whether the parties have negotiated the subject, and whether the union has intelligently and voluntarily waived its right to negotiate the issue or file a grievance concerning it. The risk to the employer is that disputed decisions usually occur long after management rights clauses are negotiated; at the time of actual negotiation, neither party may have anticipated the particular circumstances at issue. Given the requirement of a clear, unmistakable waiver,[4] an employer's right to act is more likely to be upheld if that right is specified in the management rights clause.

Even when management decisions are not excluded from grievance and arbitration procedures, language similar to the Type II clause can reduce the number of grievances filed against management. Employees or union representatives may file fewer grievances or other legal actions if the language of the management rights clause indicates that many challenges would be dismissed.

TYPE III: GENERAL

The Type III clause is less comprehensive than the Type II clause described above. It specifies fewer of the rights retained by management, and does not specifically list as many important rights. In addition, the definition of enumerated rights appearing in a Type III clause may not be as detailed as those found in most of the Types I and II clauses.

The Type III clause was the largest category of management rights clauses, appearing in 32 percent of the agreements. The format of the clauses within this category may vary slightly. The following language is most characteristic of this type:

> Except to the extent otherwise limited or modified by this Agreement, the Administration retains the right and responsibility:
>
> A) To direct the work of police officers.
>
> B) To determine the mission of the Police Division and the personnel, methods, means and procedures necessary to most efficiently fulfill that mission.
>
> C) To suspend, discipline or discharge officers for just cause.

D) To take actions as may be necessary to carry out the mission of the Police Division in emergencies.

E) To hire, promote, and demote police officers within the powers granted by law.

F) To recruit, select and determine the qualifications and characteristics of new hires.

G) To schedule or not schedule overtime as required in the manner most advantageous to the requirement of efficient governmental operations.

H) To train and retrain police officers as appropriate. (Westmoreland County, Pa., and Teamsters Local No. 30 Park Police).

A more general example of the same category would be the following clause:

Except as expressly limited by the county code, other relevant statutes and codes or provisions of this agreement, and reserving unto the county any and all management rights which, by law, may not be bargainable, the county shall have and retain, solely and exclusively, all other managerial rights and responsibilities which shall include, but not be limited to, such areas of discretion or policy as: the functions and programs of the county, standards of service, its overall budget, utilization of technology, the organizational structure and selection and direction of personnel.

Further, the listing of specific rights in this agreement is not intended to be nor shall it be considered restrictive or a waiver of any rights of management not listed and not specifically surrendered herein, whether or not such rights have been exercised by the county in the past. (Akron, Ohio, and FOP Lodge No. 7.)

This type of clause is less comprehensive in its coverage and specifies fewer categories of rights retained by management. This lack of specificity often raises questions which may have to be answered by an arbitrator or agency on a case-by-case basis. For example: Does this language clearly permit the employer unilaterally to change work schedules, to layoff employees,to discontinue a city function or operation, or to subcontract work that currently is performed by bargaining unit employees?

In addition, it should be noted that, unlike clause 2, the first clause does not contain language specifying that management rights are not limited to those listed in the clause. The lack of this language in this type of clause may pose added problems. Management rights here may be subject to encroachment under the argument that by specifying some rights, others may be excluded.

Finally, many of the positive attributes of the Types I and II clauses discussed above generally are not provided by Type III clauses. However, administrators should read the collective bargaining agreement in its entirety to determine whether limitations exist on a particular management action, or whether management has retained its rights by reference to other clauses. An agreement containing a Type III (relatively general) management rights clause could also contain express language in other clauses through which the employer retains the rights and advantages provided by the Types I and II clauses. For example, the grievance and arbitration clause may give management the right to act unilaterally, by exempting certain decisions from the contractual appeals procedure; the discipline clause may give the employer authority to discharge an employee, while also precluding grievability or arbitral review of such action.

TYPE IV: RESIDUAL RIGHTS

The Type IV clause consists of general language stating that management retains previously existing rights, inherent rights, or both. This type of clause has also been known as a residual rights clause, since it generally embodies the principles of the residual rights theory. Eleven percent of the agreements had a Type IV clause.

One of the simplest examples of this type of clause stated merely:

The Union recognizes the Employer's right to manage its affairs and direct its work force. (Macomb County, Michigan, and the Macomb County Deputy Sheriff's Association.)

More typical of the clauses in this group was the following:

The Federation recognizes the right of the City to operate and manage its affairs in all respects in accordance with applicable laws and regulations of appropriate authorities. All rights which the City has not officially abridged, delegated or modified by this Agreement are retained by the City. (Minneapolis, Minnesota, and the Minneapolis Police Officer's Federation.)

A final example of this type of clause is:

This Agreement has not been designed to violate any Federal, State, County or Municipal laws nor shall anything in this Agreement be interpreted as diminishing the rights of the employer to determine and prescribe the methods and means by which its operation of the Police Department shall be conducted, except as may otherwise be provided in this Agreement. (New Bedford, Mass., and the New Bedford Branch of the Massachusetts Police Association.)

If other contract provisions do not give management the sole discretion to act in important areas, this short-form statement of residual rights may be of little value. For example, questions can arise as to whether management has retained the right to act in a given situation, or whether the employee representative has waived a right to participate in a decision. The employer constrained by a Type IV clause is at a relative disadvantage, compared with an employer who has a clause dealing with particular issues.

When management specifically reserves rights through contract language, it can refute challenges with an argument that the union voluntarily agreed to forego discussion and to leave exercise of those rights entirely within the employer's discretion. The ability to raise this argument is important to an employer's power to act unilaterally and a Type IV management rights clause may limit this ability.

TYPE V: WEAKEST

About 13 percent of the agreements containing management rights clauses could be classified as coming within the Type V category. The language found in these clauses can cause management decisions to be subject to negotiation, grievance and arbitration. In effect, these clauses may serve to significantly limit management prerogatives. The following is an example of a Type V clause:

Section 2.1—Management Rights. Except insofar as modified by this agreement, it is the exclusive right of the County to determine the purposes and objectives of each of its constituent offices and departments; set standards of services to be offered to the public; to determine the methods, means, personnel and other resources, including volunteers, by which the County's operations are to be conducted including the contracting out of work if deemed nec-

essary by the County, and to exercise control and discretion over its organization and operations. It is also the right of the County subject to applicable provisions of this Memorandum of Understanding and in accordance with the County Charter and other applicable laws, to direct its employees and to establish reasonable work rules; also to demote, suspend, discharge or take any other disciplinary action against its employees for just cause, provided however, that nothing contained in this Section shall be deemed to deny the right of any employee to submit a grievance with regard to the exercise of such rights. (Baltimore County, Maryland, and the Fraternal Order of Police Lodge No. 4.)

While this clause stipulates certain specific rights of management, the last proviso could mean that such employer decisions can be challenged. Employees and their union appear able to discuss the impact of, and even take issue with, management actions. Where an agreement also provides for arbitration, exercise of employer discretion could cause union challenges and lead to arbitration.

In most collective bargaining agreements, "grievance" is limited to allegations that the express terms of the contract have been violated, misinterpreted, or applied unreasonably, and arbitrators are confined to actual provisions of the contract. However, the above language could expand that jurisdiction to include matters beyond the terms of the collective bargaining agreement. An indefinite number of management decisions are grievable and employees or their representatives may veto decisions that should properly be made at management's discretion.

One agreement contained a variation of the above language. After listing the employer's rights, it said:

> The Personnel Director shall, on request of either party, refer questions regarding the interpretation of this Section, which cannot be resolved between employee and management representatives, to either the Board of Supervisors or the Civil Service Commission for hearing and final determination, depending on which body has authority over the matter in dispute. In no event shall such dispute be subject to the grievance procedure of this Memorandum of Understanding.

It also provided that:

> The exercise of County rights does not preclude employees or the Organization from consulting or raising grievances on decisions which affect wages, hours, and other terms and conditions of employment.

While attempting to exclude management rights from the grievance procedure, the above language may have the effect of limiting management decisionmaking itself in two significant ways. First, while purporting to exclude management decisions from the grievance procedure, it may allow application of the grievance procedure to the *effect* of those decisions. In addition, the section is itself subject to interpretation by two outside bodies. Effective use of either of these two limitations by employee organizations could frustrate or delay implementation of management decisions.

It should be noted that, because of the language of other provisions of the collective bargaining agreement, review by an arbitrator may occur even in situations where a strong management rights clause exists. For instance, some collective bargaining agreements make police department rules and regulations subject to grievance, thus providing a basis for challenging many police management decisions. Some arbitrators have been known to use the recognition clause, the purpose of which is to recognize a particular union as bargaining agent, or other indirect language to infer some guarantee on the part of management to act reasonably. Indeed, some commentators believe that the reasonableness of most employer decisions about employment related matters is subject to review by an arbitrator. This is why specific language such as the Type I management rights clause is recommended in order to preserve the manager's power to make unfettered decisions. Also, the jurisdictional limits contained in the grievance arbitration provision are crucial to a determination of whether the parties agreed to preclude arbitral review of certain managerial decisions.

NOTES

1. *How Arbitration Works*, Elkouri & Elkouri, p. 413 (BNA 1973), hereinafter cited as *Elkouri*.

2. See, Smith and Jones, "The Impact of the Emerging Federal Law of Grievance Arbitration on Judges, Arbitrators and Parties," 52 Va. L. Rev. 831, 897-902 (1966), where detailed clauses favored by management representatives are quoted.

3. See, e.g., *Consolidated Foods Corp.*, 183 NLRB No. 78 (1970); *Cello-Foil Products, Inc.*, 72 LRRM 1196 (NLRB 1969).

4. See, for example, the decision of the Florida Public Employee Relations Commission (PERC) in Orange County School Board, Case No. 8H-CA-764-1124 (1977). In that case, it was held that a school board committed an unfair labor practice when it unilaterally changed the work year of some teachers from 12 months to 10 months, even though the agreement contained a management rights clause and did not restrict the employer's right to take the action in question. The Florida PERC agreed with well-established law that, unless there is a *clear and unmistakable* waiver, employee representatives should have the opportunity to participate in the decision to change the work year.

CHAPTER 2

MAINTENANCE OF STANDARDS

About 49 percent of the bargaining agreements studied contained maintenance of standards clauses. The clauses were for the most part relatively short, but there was a wide variation in the actual language employed. Twenty-nine percent of all agreements analyzed either maintained present conditions of employment throughout the term of the contract or prohibited change without prior negotiation with the Union. Seventeen percent required that the employer either consult with or give notice to the union prior to implementing any changes in conditions of employment. Finally, the language in eleven percent of the agreements studied restricted the application of the maintenance of standards clause to specified subjects.

Despite varied language, these clauses all attempted to serve a similar function. This function was to preserve for the life of the agreement existing benefits and conditions of employment. Typical of most of the clauses was the following:

> It is understood and agreed that all employees' rights and benefits which are presently enjoyed but not specifically covered in this Agreement shall be maintained. (White Plains, New York.)

A more unusual example, and one which could prove much more restrictive of management rights, was a bargaining agreement which contained the following language:

> All conditions or provisions beneficial to employees now in effect which are not specifically provided for in this Agreement or which have not been replaced by provisions of this Agreement shall remain in effect for the duration of this Agreement, unless mutually agreed otherwise between the City and the Union. (City of Buffalo, New York and Buffalo PBA.)

The problems posed by maintenance of standards clauses is their potential for application to matters beyond those which the parties (or at least the employer) had in mind at the time the language was negotiated. Based on exisiting arbitration decisions, the assumption that such terms as "condition of employment" or "benefit" will necessarily be limited in application to such major issues as hours of work, health insurance matters, and so on, is not only unrealistic but erroneous. Analysis of private sector arbitration decisions illustrates the fact that maintenance of standards clauses carry a great deal of weight with arbitrators in the resolution of a wide variety of issues. Differences between public and private sector employment notwithstanding, this same wide range application of maintenance of standards clauses to comparable issues arising in the public sector is a significant possibility.

MAINTENANCE OF STANDARDS

	Number	Percent
Contracts specifically prohibiting changes in benefits or conditions during contract term, or without prior negotiation and mutual accord	40	29
Contracts calling for meeting or consultation before any change in benefits or conditions	17	12
Contracts calling for prior notification	6	4
Maintenance of standards clauses pertaining to specified number of subjects	14	10
Contracts containing other maintenance of standards language	17	12
Contracts not containing maintenance of standards language	64	46

Maintenance of standards clauses have been invoked by unions in a wide variety of situations, with varying degrees of success. Some examples of these applications include the following:

1. Altering duties performed by employees in a given position: *Falstaff Brewing Corp. and Machinists,* 52 LA 473 (Dugan, 1969);

2. Discontinuance of a significant portion of the employer's operation: *United States Steel Corp.,* 36 LA 940 (Garrett, 1961);

3. Discontinuance of practice of compensating employees for time spent in grievance handling: *Bethlehem Steel Co.,* 39 LA 557 (Valtin, 1962);

4. Imposition of a residency requirement: *City of Bay City, Michigan, and Firefighters Local 1435,* 61 LA 655 (Herman, 1973);

5. Changes in distribution of "in kind" bonuses on Christmas and Thanksgiving: *Tech-Cast,* 75 LA 1211 (Daniel, 1980);

6. Changes in employer methods of operations: *Pillsbury Co.,* 75 LA 523 (Fitch, 1980);

7. Discontinuance of employee off-duty use of municipal vehicles: *City of Tampa, Florida and Hillsborough Police Benevolent Association*, 74 LA 1169 (Wahl, 1980);

8. Addition of new discipline rule: *Wolverine Aluminum Corp.*, 74 LA 252 (Dobry, 1980);

9. Implementation of affirmative action plan: *City of Detroit*, 73 LA 717 (Daniel, 1979);

10. Implementation of scheduling changes: *Hoboken Board of Education*, 75 LA 988 (Silver, 1980);

11. Participation in holiday parade: *City of Southgate and Southgate firefighters Local 1307*, 67 LA 368 (Ellmann, 1976);

12. Rental increase in state owned employee housing: *State of Alaska*, 74 LA 459 (Hauck, 1979);

13. Discontinuance of policy permitting employees to grow beards: *Utah Army National Guard*, 74 LA 770 (Wiggens, 1980).

The above examples reflect the union's attempt to use maintenance of standards clauses to challenge a wide variety of managerial decisions affecting, either directly or indirectly, members of the bargaining unit. Such clauses have been invoked in an attempt to interdict decisions ranging from the discontinuance of operations to changes in the format and content of employee accident reports.

Attempts by unions to expand the application of maintenance of standards clauses have met with mixed success. A random sampling of arbitration decisions discloses that union arguments premised on standards clauses have been rejected in a majority of cases. Nevertheless, unions do prevail in a very significant minority of cases, which often involve major decision-making functions of the employer.

Because of their potentially wide ranging application, maintenance of standards clauses should be avoided if possible. Ideally, language should be included in the bargaining agreement reserving management's right to change conditions of employment. There were several examples of this type of language in the agreements studied. One, for example, contained the following clause:

> Any terms and conditions of employment not specifically established or modified by this Agreement shall remain solely within the discretion of the Employer to modify, establish, or eliminate. (Ramsey County, Minnesota, and the Ramsey County Deputy Sheriffs.)

Another contained the following language:

> Continuance of working conditions and practices not specifically authorized by ordinance or by resolution of the board of supervisors is not guaranteed by this memorandum of understanding. (San Mateo County, California, and San Mateo Sheriffs.)

Finally, one agreement contained the following language:

> The County and the Lodge shall not be bound by any requirement, which is not specifically stated in the Memorandum of Understanding. Specifically, but not exclusively, the County and the Lodge are not bound by any past practices or understandings of the County or the Lodge unless such past practices or understandings are specifically stated in the Memorandum of Understanding. (Jefferson County, Kentucky, and FOP Lodge No. 14)

If management rights in this area cannot be reserved as in the examples above, or if a standards clause cannot be avoided, it is important to secure the least problematical language available. Rather than banning changes in existing conditions altogether, the language should require no more than prior notification to the union and the opportunity for the union to have a voice in the changes. The notification requirement should have no time limitation. Consider, for example, the following language from an agreement analyzed in the previous study:

> Prior to implementing a significant change in existing working conditions, the City shall notify the union of its decision to effect that change. The union may present its views with regard to that change to the Chief or his designee. The final decision regarding any change shall remain with the City.

If the public sector employer is subject to a collective bargaining statute, it may want to consider a different approach. An example of this approach was contained in a bargaining agreement which stated:

> There shall be no change or modification in wages, hours, and working conditions by the County without first meeting and conferring in good faith with VSCA (the union) to the extent required by law. (Ventura County, California, and the Ventura County Sheriffs Association.)

Generally speaking, this language does nothing more than reiterate the employer's obligation under an existing public sector bargaining law. Though the clause is objectionable, it is not nearly as onerous as a broadly written maintenance of standards clause. By limiting the clause to matters over which the parties are obligated by law to bargain, the language empowers the city to make unilateral changes in matters which are not deemed to be mandatory subjects of bargaining.

Still another approach is to limit the application of the maintenance of standards clause to subjects covered in specific documents or sources. An example of this is the following clause, which provides:

"Rather than banning changes in existing conditions altogether, the language should require no more than prior notification to the union and the opportunity for the union to have a voice in the changes."

> Any job benefits or working practices existing prior to the date of this Agreement, which were the subject of any written memoranda or directives issued by the Chief or his Superiors and which are not specifically provided for or abridged in this Agreement, are hereby protected by this contract. This provision shall not preclude the right of the City Manager to make reasonable changes in such work practices and job benefits, provided that no such change shall be made for the purpose of undermining the Union. (City of Hartford, Connecticut, and Connecticut Police Officers.)

While not all prior benefits and practices are insulated from unilateral changes by

the employer, application of this clause is limited to the matters addressed in specific written communications by officials of the police department. Those matters which have not been addressed in any prior memoranda or written directives remain within the sole prerogatives of the employer.

In addition, the last sentence effectively removes any prohibition upon unilateral changes by the city manager of even those changes or benefits protected by the maintenance of standards clause, so long as the change was not made with the purpose of undermining the union. The employer's ability to effect changes in existing benefits and practices is thus limited only to the extent that such change was pursued with the object of destroying or weakening the union. It should be added, however, the employer's discretion in this area may also be limited by the requirements of any applicable bargaining statute.

Some agreements spelled out the subject areas or matters which were protected from unilateral changes by the employer during the term of the contract. Clauses that specify the subject areas insulated from unilateral changes significantly reduce a wide ranging and unpredictable application of a more general maintenance of standards clause. An example of this more specific clause would be the following:

> Past practices relating to Lodge executive board attendance at board meetings, delegates to FOP conferences, work sessions of Lodge negotiators, funeral representation, and benefits provided in Ordinance No. 815-76, as amended, prior to the effective date of this Agreement which are not specifically addressed in this Agreement, shall not be altered except by negotiations between the parties. (City of Columbus, Ohio, and FOP Lodge No. 9.)

Another example of this approach appears in the following clause from an agreement analyzed in the prior study:

> The city shall maintain its existing policy with respect to holidays, vacations, maternity leave, education, claiming uniforms and related equipment, portable radios, payment of earned and accrued overtime, vacations and holiday time, and defense of lawsuits and open door policy with respect to meeting with the Police Chief for discussing departmental rules and regulations.

The key advantage of the above language is the inference that areas not specifically covered within the maintenance of standards clause are not subject to its application. This would effectively prevent the unpredictable and wide application of a more general maintenance of standards clause.

CHAPTER 3

GRIEVANCE PROCEDURES

The grievance procedure is one of management's most significant clauses in a collective bargaining agreement. Grievance mechanisms are relatively fast and inexpensive ways to resolve problems concerning interpretation of the contract. If there were no grievance procedures, the parties, especially the union, would have to resort to court proceedings or coercive tactics to resolve contractual disputes. One arbitrator gives the following reasons for negotiating such procedures:

> The primary purposes of a grievance procedure are to (1) channel conflict into an institutional mechanism for peaceful resolution; (2) facilitate communication between labor and management regarding problems that arise in a collective bargaining relationship; (3) enable employees to complain with dignity knowing that there is a system of appeals leading to, in all probability, an impartial decisionmaker; and (4) enforce administrative compliance with the terms and conditions negotiated by the parties.
>
> Several other functions may be served implicitly in the course of fulfilling these primary purposes. For example, the grievance procedure can provide guidance for future cases by clarifying the meaning of the contract. Both parties may review grievances to detect ambiguities and problem areas in the agreement as part of the preparation for future negotiations. Additionally, the pattern of grievances may provide valuable information to upper-level managers by identifying problems of supervision and personnel policy which can then be corrected before more serious difficulties arise.
>
> Grievance procedures have also been used as a strategic device by unions in dealing with employers. For example, a union may use the procedure as a technique with which to gradually extend the bargaining agreement by gaining concessions from management that embellish the literal provisions of the contract. In other cases, unions may press grievances with particular vigor in order to gain leverage in forthcoming contract negotiations or to satisfy constituents who are being appealed to by rival factions internal or external to the incumbent union.[1]

In our study of police department collective bargaining agreements, we found that approximately 93 percent of the agreements reviewed referred to grievance procedures. Although language varied between agreements, common patterns emerged concerning the following provisions of grievance procedures:

- defining what constitutes a grievance
- time limits for presenting grievances
- steps in grievance procedures
- time limits for processing grievances
- final steps in the grievance procedure
- limits on powers of arbitrators, and
- special considerations in grievance procedures.

DEFINING WHAT CONSTITUTES A GRIEVANCE

The first step in analyzing grievance procedures is to determine what constitutes a grievance. Since binding arbitration is available to resolve many grievances, the question of whether a matter is a valid grievance is of paramount concern to management representatives. If a matter is not a grievance as defined by the agreement, it may not be submitted to binding arbitration for resolution. If an arbitrator overlooks this important fact, management may successfully challenge the award, arguing the arbitrator exceeded his or her jurisdiction.

Further, a clearly drafted definition of grievable matters limits the number and types of disputes submitted as grievances. For example, matters subject to civil service jurisdiction may be exempt from the definition of a grievable matter, preserving jurisdiction of the civil service commission. Another grievance definition may include only alleged violations of specific terms of the written collective bargaining agreement, precluding review of other matters not covered by the agreement, clearly a management goal.

About 89 percent of the collective bargaining agreements contained definitions of a grievance. These definitions fell into four general categories: narrow, limited, broad and undefined. These are discussed below.

Narrow Definitions

Approximately 17 percent of the agreements that discuss grievance procedures (or 89 percent of all the agreements) provide that certain employment related matters shall not be subject to the grievance procedures. An example of this is the following:

> A grievance shall be defined as a dispute or disagreement as to the interpretation and application of any provision(s) specifically expressed in this Agreement . . . . Items exempt from consideration for processing under this grievance procedure shall include, but not necessarily be limited to, the following: disciplinary actions; job classifications; promotional procedures, departmental operations, including orders given, response to such orders and the carrying out of required duties; all matters contained in 62.13, Wis. Stats. (Madison, Wisconsin, and the Association of Madison Police Officers.)

Listing specific items excluded from the grievance procedure substantially limits the number and types of matters subject to review and possible veto by arbitration. Other clauses in this category are less comprehensive because they place fewer restrictions on grievable matters. An example of a less specific definition would be the following:

> A grievance is any dispute which involves the interpretation or application of any provision of this Memorandum of Understanding, excluding, however, those provisions of this Memorandum of Understanding which specifically provide that the decision of any County official shall be final, the interpretation

or application of those provisions not being subject to the grievance procedure. (San Mateo, California, and the Deputy Sheriffs.)

Finally, many of the agreements which narrowly defined grievances contained exceptions wherein matters subject to civil service jurisdiction were specifically excluded from the grievance procedure, even though the written agreement included issues regulated by a civil service commission. The advantage of this approach is to protect the jurisdictional powers of a civil service commission from challenge through grievances and to prevent an arbitrator from overruling decisions made by a civil service commission. For example:

> Any grievance or dispute which may arise between parties concerning the application, meaning or interprtation of this Agreement, shall be settled in the manner prescribed by the agreed upon grievance procedure provided that such grievance and dispute is not covered by Civil Service Rule No. 11. (Spokane, Washington, and Spokane Police Guild.)

Advocates of strong management rights and powers prefer grievance procedures which have the least impact on the employer's decisions. Narrowly defining grievances limits the scope of issues reviewable by grievance mechanisms. However, our study indicates that a narrow definition is the least likely kind of definition to appear in the bargaining agreement. This is probably because employee organizations strongly resist such language.

Limited Definitions

This type of contract clause defines grievances as including only issues directly related to terms and conditions of the collective bargaining agreement and limits the subject of grievances significantly. This category was the most widely used category of definitions of grievances, comprising about half of all the agreements which contained grievance provisions.[2] A typical example of a limited definition is the following:

> Only matters involving the interpretation, application, or enforcement of the terms of this agreement, shall constitute a grievance under the provisons of this grievance procedure. (Corpus Christi, Texas, and Corpus Christi Police Officers' Association.)

A more comprehensive and rather unusual example is the following:

> A grievance is defined as an allegation by an employee or group of employees that the County has failed to provide a condition of employment set forth in this Memorandum of Understanding, as adopted by ordinance, or in the annual salary ordinance, provided that the enjoyment of such right is not made subject to the discretion of the Sheriff or the County; and, provided further, that the condition of employment which is the subject matter within the scope of representation as defined in California Government Code Section 3504. (Alameda County, California, and the Deputy Sheriff's Association.

To determine whether the grievance definition covers an issue, the parties must refer to the collective bargaining agreement text. If the agreement language is expansive, it is likely that a matter may be grievable; however, if the agreement language is narrow in scope, the opposite of this may be true.

Broad Definitions

This category includes clauses that may subject issues beyond the scope of the written agreement to grievance procedures. From a management perspective, these clauses actually can increase the number and types of management decisions that may be subject to review by employees or unions. When the final step of a grievance procedure includes binding arbitration for unsettled grievances, a broad definition can subject a wide range of issues to potential reversal or modification by an arbitrator.

Approximately one third of the agreements that referred to grievance procedures, and 33 percent of **all** agreements, contained a broad definition of what constitutes a grievance. One example is:

> A grievance is hereby defined as any dispute which involves the interprtation or application of this agreement or disciplinary action taken against an employee, or the application of the Personnel Rules, or the application of Departmental rules or orders. (Oakland, California, and the Oakland Police Officers' Association.)

This language subjects many employment-related issues to the contract's grievance procedure. The parties that agreed to the language presumably chose to subject most employer actions to the procedure. Although the majority of contracts do not contain such a broad definition, a significant minority do adopt this more liberal view.

A few contracts compromised: They contained a relatively broad definition of "grievance" (allowing grievance of some noncontract issues), but limited the review of certain grievances, precluding their processing beyond a certain step in the grievance procedure. For example:

> The term "Grievance" shall be
>
> (a) Any dispute concerning the application or interpretation of the terms of the Memorandum of Understanding; or
>
> (b) Any dispute concerning the discriminatory application or misapplication of the rules and regulations of any agency of the County or any claimed violation thereof; or
>
> (c) Any dispute involving the suspension, dismissal, disciplinary action, transfer, promotion policy, or demotion of any employee or complaint about an examination or examination rating.
>
> (d) In no event shall any matter arising from a complaint against an officer be the subject of a grievance pursuant to this Article. Such matters shall continue to be heard by a Hearing Board under Section 5 of the . . . Police Rules and Regulations and Manual of Procedures. (Baltimore County, Maryland, and FOP Lodge No. 4.)

No Definition

Only 4.4 percent of the contracts analyzed did not define what constitutes a grievance. Because the definition of this term is so important, in the large majority of situations the parties are sure to include it, thus explaining the paucity of contracts in this subgroup. When an agreement does not specify what constitutes a grievance, the result may be that no limitations have been agreed to, and therefore the grievance procedure may be available to the broadest range of issues. In addition, the parties may risk subjecting themselves to different and potentially conflicting results by different arbitrators.

Because of the obvious confusion that can occur about whether a matter is subject to grievance procedure, both parties should agree on a specific definition of

what constitutes grievable issues. Management representatives who want to retain the maximum amount of authority should use a narrow, limited definition; those willing to consider a variety of grievances may wish to use a more broad definition of what constitutes grievances under terms of the agreement.

TIME LIMITS FOR PRESENTING GRIEVANCES

Grievance procedures generally stipulate time limits in one or more of the following areas:

1. When an employee or union must file the grievance initially.
2. When an employer must file an answer or the employee must refer the issue to a higher step in the process.
3. When arbitration must be requested.

A collective bargaining agreement should specify both time limits and the consequences of failure to abide by them. It is to both parties' advantage to process grievances before witnesses have forgotten facts or evidence is lost or destroyed. Time limits also lessen the chance that a union will allow grievances to accumulate in an effort to pressure management to resolve one or more of the issues in favor of the employees concerned. Finally, the determination of whether management's acts were appropriate is important; immediate settlement of formal challenges will help define the limits of what management can do legitimately. An example of a clause limiting the time for presenting grievances would be the following:

Section 5.1 A grievance is hereby defined as a question or challenge involving the interpretation, application, or an alleged violation of specific provision of this Agreement that is brought by the grieving party to the attention of the other party within thirty (30) working days of the time the grieving party first became aware of the violation. Working days referred to in this Article shall be identified as Monday through Friday with the exclusion of holidays recognized by the City. Such grievances shall be resolved in the following manner:

Step 1 Employee raises grievances with his immediate supervisor or Union representative raises grievance with the City official most immediately involved. If not resolved, written communication is required within ten (10) working days in order to proceed to Step 2.

Step 2 Employee or Union representative outlines grievance in writing, identifying all relevant facts and proposed remedies, if available, and presents same to head of employee's department, or the Departmental Labor-Management Committee. Any employer grievance shall be filed at this step and presented to the Union's business representative or the Departmental Labor-Management Committee. A decision on said grievance shall be presented in writing within fifteen (15) working days of submission in Step 2. The Departmental Labor-Management Committee shall consist of two Union designees, one City Manager designee and one Police Chief designee.

Step 3 Provided the grievance is not settled satisfactorily at Step 2, grieving party presents the grievance to the City-Wide Labor-Management Committee for discussing and resolution. The City-Wide Labor-Management Committee shall consist of one member from affected union; 2 members from the City Joint Labor Committee selected by the affected Union; the Chief or his designee from affected Department; the City Manager or his designee; the Personnel/Labor Relations Director or his designee, within twenty (20) working days of submission of findings in Step 3. If grievance was not settled satisfactorily, either party shall give notice to the other party of their intent to submit said grievance to the Public Employment Relations Commission or the designated state agency that is authorized to supervise and control the Public Employees Collective Bargaining Act (41.56).

Section 5.2 Arbitrators shall be chosen from a list provided by the Public Employment Relations Commission or from a list provided from any other source mutually agreeable, or by the parties mutuallly agreeing on an arbitrator. The arbitrator's decision shall be final and binding, however, the arbitrator shall have no power to render a decision that will add to, subtract from or alter, change or modify the terms of this Agreement, and his power shall be

GRIEVANCE AND ARBITRATION PROCEDURES

	Number	Percent
Contract defines "grievance" narrowly; certain matters are specifically excluded from the grievance procedure.	23	16
Contract definition of "grievance" is limited; it must relate to application or interpretation of express terms of the contract.	59	42
Contract defines "grievance" broadly; most employment-related issues are grievable.	42	30
Contract does not define "grievance".	16	11

limited to the interpretation or application of this Agreement. (Tacoma, Washington, and I.A.U.P. Local No. 6.)

The above language stipulates when to file a grievance, when to appeal, and when a grievance can be subject to arbitration. Furthermore, the clause should stipulate the consequences of failure to file, appeal, or respond to a grievance (e.g., the late filing of appeal results in dismissal of the claim). These provisions help ensure that grievances will be filed early and processed through to settlement or arbitration expeditiously.

STEPS IN GRIEVANCE PROCEDURES

The agreements in this study commonly specified steps for action during grievance procedures. Of those agreements that considered the issue, approximately 73 percent listed oral dicussions as the first action; binding arbitration was the final step of the procedure in approximately 79 percent of the agreements. This provision appeared in 73 percent of **all** agreements. Common intermediate steps included written recourse to the employee's immediate supervisor, and subsequent appeal to the chief of the police department. One of the benefits of such intermediate steps is that review procedures encourage peaceful settlement of a dispute, without recourse to binding arbitration.

In some jurisdictions, supervisory employees may be members of the same (or a related) bargaining unit as the grieving employees. When this occurs, supervisory employees may pass the dispute up the steps of the grievance procedure to more senior levels of management.

Some agreements interposed a grievance evaluation committee comprised of union appointees to allow the union to make decisions about whether particular employee complaints constitute meritorious grievances. Employers should remember that they have several options regarding grievance procedures, and should construct steps that meet the interests and needs of both parties, and encourage settlements before grievances lead to arbitration.

LIMITATIONS ON PROCESSING GRIEVANCES ON EMPLOYER TIME

Parties to collective bargaining agreements often include language regarding allocation of time for processing grievances. Because employers are concerned about employee productivity, they often insist on limiting the right of employees to process grievances during working hours. These limits help ensure that employees attend to duties, rather than spend working hours investigating or processing grievances. Time limitations also can discourage submission of questionable grievances. Our study revealed that time limits for grievance processing were of four general categories:

1. Processing of grievances occurs during nonwork time.
2. A "reasonable" amount of work time is allowed for grievance processing.
3. The amount of time or number of employees allowed for grievance processing is regulated.
4. The collective bargaining agreement does not deal with time for grievance processing.

A few of the agreements referring to grievance procedures, 2 percent, explicitly provided that grievance processing should occur during nonworking time. For example:

> Meetings between representatives of the City and of the P.B.A. Local 4, for the negotiation of terms of the Agreement or the handling of grievances as prescribed herein shall be scheduled during nonworking time of affected employees, except by mutual agreement between the Director and/or Business Administrator and the P.B.A. representative. (Elizabeth, New Jersey, and the P.B.A. Local No. 4.)

Forty-nine percent of the agreements referring to grievance procedures regulated the number of persons or amount of time for which the employer would pay wages relating to grievance processing. Many of the clauses in this category provide further that notification or permission concerning grievance processing must be obtained from an immediate supervisor in advance. As indicated by the examples below, the language between the agreements varied substantially.

> The City shall recognize two Association grievance representatives. The employee and/or Association grievance representatives shall be allowed a reasonable amount of time without loss of pay if it is necessary to investigate and present a grievance to the City during their regular working hours, provided the Police Chief approves the absence from work and provided the departmental operational functions can accommodate a temporary diversion from a work assignment to foster overall work harmony. (Madison, Wisconsin, and the Association of Madison Police Officers.)

> One shift representative may, when the Association is designated in writing by unit employee as his/her representative, attend mutually scheduled grievance meeting and hearings with department representatives and hearings scheduled and conducted by the Civil Service Board without loss of pay or benefits. In no event shall this paid release time be used for any other purposes, such as gathering information, interviewing the grievant/appellant, or witnesses, or preparing a presentation. The shift representative is required to obtain the permission of his non-unit supervisor to absent himself from his duties to attend scheduled grievance meetings. A shift representative wishing to enter a work area for the purpose of investigating a formal grievance must first gain the permission of the work area supervisor. (This permission will not be unreasonably withheld, giving proper consideration to essential work of the department and the occupational safety of the shift representative.) (Phoenix, Arizona.)

> The Union shall designate to the City in writing the names of the Union officers and shall certify in writing the names of fourteen (14) authorized grievance representatives. Any changes in Union representation shall be recognized by the City only after the changes are certified to the City in writing by the Union. Authorized grievance representatives will be allowed time off without pay to attend meetings and hearings and to visit other work sites for the purpose of transacting grievance business after notice to the supervisor. Such permission for time off shall not be requested when the Union activity could reasonably be performed during nonworking hours, and, such permission shall not be unreasonably withheld by the supervisors involved. (Pittsburgh, Pennsylvania.)

Approximately 29 percent of the agreements referring to grievance procedures provided reasonable time off for grievance processing. Often, these clauses further limited use of such time to situations where a management representative granted approval after being requested to do so by either the employee or the union

representative. The following is a typical example:

> Grievance committee members may investigate and process grievances during working hours, within reasonable limits, without loss of pay, and all efforts shall be made to avoid disruptions and interruption of work. (Multnomah County, Oregon.)

The advocates of allowing time off to handle grievances argue that it works to the advantage of the employer because the police representative can easily and quickly put potential problems to rest, thus ensuring against festering problems that may lead to labor-management strife, such as picketing or work stoppage. Critics of this theory argue that allowing time off may increase the volume of grievance activity and hamper productivity, because employees may ferret out problems rather than attend to their normal work duties. In the majority of cases, time limitations are provided for or the employer has retained the freedom to approve use of work time to process grievances.

The remaining agreements referring to grievance procedures were silent regarding time off for handling grievances. Such silence cannot reasonably be construed to allow employees time off to process grievances; rather, it can be interpreted to require employer approval for such time off. However, the past practice of the employer (if a clear, consistent pattern exits) will probably be the best guide to the parties' understanding. If the status quo has been for the employer to allow employees time off, the employer may be held to continue the practice or change it through future negotiations. When the contract is silent, employers should establish time-off practices consistent with their goals for employee productivity and accountability.

In conclusion, specific contract language should deal with the issue of paid time for processing grievances. Such contract language should restrict the number of employees, stipulate the time period, or provide for "reasonable" time off with prior employer approval. When the collective bargaining agreement is silent, the consistent practice of the parties may govern until they modify it by a subsequent agreement.

FINAL STEP IN THE GRIEVANCE PROCEDURE

One of the most important clauses in any collective bargaining agreement is the provision for resolving unsettled grievances raised in the grievance procedure. The final step of the procedure usually falls within one of these categories:

1. Grievances go to an arbitrator for binding resolution.
2. Grievances go to an arbitrator or other body for advisory recommendations.
3. A management representative or third party resolves grievances.

Resort to binding arbitration is the most restrictive, because management action is subject to review, reversal, or modification by an arbitrator. Nevertheless, binding arbitration of grievances is a common contract provision; our study found that approximately 79 percent of the collective bargaining agreements that referred to grievance procedures required binding arbitration of unresolved grievances.

Several agreements contained provisions limiting binding arbitration to only certain matters. One agreement, for example, provided:

> With respect to the interpretation, enforcement or application of the provisions of this Agreement which do not relate to the statutory and charter authority of the City Council and the City Manager the decision, findings, and recommendations of the Arbitration Board shall be final and binding on the parties to this Agreement. (Oklahoma City, Oklahoma, and FOP No. 123.)

About 13 percent of all the agreements studied provided for some form of "advisory" arbitration. Advisory arbitration does not automatically result in a decision binding on the employer. However, the process does allow a neutral third party to investiage disputes and give advice. If the advice given is acceptable to both parties, they may agree to adopt the recommendation with or without changes.

Approximately 12 percent of the agreements with grievance procedures used the alternative of referring unresolved grievances to an employer representative such as the police chief, city manager, or personnel director, or to a neutral third party entity such as a civil service commissioner. An unusual example of such a clause is the following:

> If the response of the Police Chief does not result in resolution of the grievance, the grievant may, within fourteen (14) calendar days of the Step III response, appeal the grievance by signing and completing the city form and presenting it to the Grievance Committee. . . .
>
> If the grievant so elects in writing within the above time limit, in lieu of such hearing the grievance may be reviewed by an arbitrator. . . .
>
> The Grievance Committee or the arbitrator shall submit findings and advisory recommendations to the grievant and to the City Manager. The cost of the arbitration and any other mutually incurred costs shall be borne equally by the parties.
>
> The City Manager shall, within fourteen (14) calendar days of the receipt of the written findings and recommendations, make the final determination of the grievance and submit it in writing to the grievant and his/her designated representative. (Phoenix, Arizona.)

Clauses that allow employer representatives to make final determination of grievances probably have the least potential for limiting management actions. When civil service commissions or similar bodies determine final outcome, management's power may be restricted depending on local circumstances, such as whether the body in question tends to decide in favor of employees or management.

The remaining agreements containing grievance procedures either did not specifically provide for a final step—referring instead to grievance procedures found in other documents—or referred to arbitration as a final step, without specifying whether arbitration was binding on the parties.

"Management representatives should consider negotiating language to limit jurisdictional power of arbitrators."

Limits on Powers of Arbitrators

Arbitrators often wield significant power to determine how collective bargaining agreements are construed in grievance situations. They may determine when an employer must fill a position, how an employee shall be disciplined, and many other issues arising under or related to the terms of the contract. Many times an arbitral award will establish precedent (often referred to as "the common law of the shop") between the parties. Where a city police department is concerned, these awards can have an impact on social policies that transcend the interests of the immediate parties.

Management representatives should consider negotiating language to limit jurisdictional power of arbitrators. Approximately 70 percent of the agreements containing grievance procedures either prevented the arbitrator from deciding issues outside the scope of the written agreement, or specifically precluded the arbitrator from deciding certain issues: For example:

> The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:
>
> 1. The arbitrator shall be bound by the language of the Memorandum and departmental rules and regulations consistent therewith in considering any issue properly before him.
>
> 2. The arbitrator shall expressly confine himself to the precise issues submitted to him and shall have no authority to consider any other issue not so submitted to him.
>
> 3. The arbitrator shall be bound by applicable State and City law. (Phoenix, Arizona.)

Some agreements go beyond the limits mentioned above and specifically preclude an arbitrator from deciding certain issues, as the following examples indicate:

1. Classification Issues
   If the grievance remains unresolved, it may be referred to an arbitrator upon notice in writing within seven calendar days after conclusion of the last step, except for grievances involving classification which may only be referred to the Civil Service Board.
2. Back Wages or Benefits
   Where a dispute relates to the scale or wages or benefits in any way, any decision (by an arbitrator) shall not be retroactive more than thirty days beyond the date on which the dispute was first presented as a grievance in writing.
3. Statutory Authority of Employer
   With respect to the interpretation, enforcement or application of the provisions of this agreement which do not relate to the statutory and charter authority of the City Council and the City Manager, the decision, findings and recommendations of the arbitration board shall be final and binding on the parties to this agreement.
4. Civil Service Appeals
   If the parties are unable to resolve the grievance at Step III within five days and the grievance is not one which is subject to Civil Service Appeal, then either of the parties may elect to proceed to arbitration.

For police management, perhaps a preferable type of clause establishing limits on the arbitrator's authority is one like the following:

> The arbitrator shall have no authority to amend, modify, nullify, ignore, add to, or subtract from the specific provisions of this agreement. He/she shall only consider and make a decision with respect to the specific issue submitted to him/per by the parties, and shall have no authority to make a decision on any other issue not so submitted. The arbitrator shall be without authority to make a decision contrary to or inconsistent with or modifying or varying in any way the application of laws and rules and regulations having the force and effect of law. No grievance involving back pay shall be retroactive more than ten days beyond the date on which the grievance was first presented in writing. To the extent the arbitrator's decision is in accordance with the provisions of this section, it shall be final and binding on all parties.

This language clearly indicates the boundaries within which the arbitrator must issue his or her decision. Note the well-drafted provision which restricts the decision to the specific issues submitted by the parties. In addition, neither party is bound by a decision (or part of a decision) that goes beyond the specified limitations of the arbitrator. The advantage of this language is that both union and management have protected the integrity of their bargaining relationship; that is, the parties have adopted contract language which precludes an arbitrator from directing their actions in areas not related to the grievance at issue. At the same time, they have carefully agreed upon the principle of arbitration to settle differences. An additional advantage to management is the limitation on back pay; without this provision, the employer might incur costly back pay awards that could amount to an unjustified penalty for action taken on a close or difficult issue.

SPECIAL CONSIDERATIONS

A small number of collective bargaining agreements referred to the following issues of special concern to management representatives.

Expedited Arbitration

Some agreements may provide for "expedited arbitration" of grievances. For example:

> Any grievance arising out of this agreement shall be submitted to arbitration under the Expedited Labor Arbitration Rules (attached as appendix 1) of the American Arbitration Association. The city and the union further agree to accept the arbitrator's award as final and binding upon them, except that the arbitrator shall not have the power to add to it, modify, amend or delete any terms or provisions of this agreement.

The following rules of the American Arbitration Association (AAA) for expedited arbitration cases are relevant:

> **Appointment of Neutral Arbitrator**—The AAA shall appoint a single neutral arbitrator from its Panel of Labor Arbitrators, who shall hear and determine the case promptly.
>
> **Vacancy**—The AAA is authorized to substitute another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly.
>
> **No Stenographic Record**—There shall be no stenographic record of the proceedings.
>
> **Evidence by Affidavit and Filing of Documents**—The arbitrator may receive and consider evidence in the form of an affidavit, but shall give appropriate weight to any objections made. All documents to be considered by the arbitrator shall be filed at the hearing. There shall be no post-hearing briefs.

Waiver of Rules—Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objections thereto in writing shall be deemed to have waived his right to object.

Time of Award—The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than five business days from the date of the closing of the hearing.

Form of Award—The award shall be in writing and shall be signed by the arbitrator. If the arbitrator determines that an opinion is necessary, it shall be in summary form.

Under conventional grievance arbitration, these practices are allowed:

1. The parties have an opportunity to select an arbitrator from a list of qualified neutral candidates.
2. The parties have access to a stenographic record of the hearing.
3. The parties may file a post-hearing brief.
4. The parties may receive a written decision from the arbitrator that states the reasoning behind the award.

The practices listed above are specifically altered by AAA rules for expedited arbitration. The rationale for these differences is that time and expense are reduced significantly when: an arbitrator is appointed, no record is made, no briefs are filed, and a written opinion is not required automatically. However, in certain important cases the employer may wish to use the provisons of conventional arbitration, especially regarding selection of an arbitrator, written briefs, and an arbitrator's opinion.

Expedited arbitration is both quick and inexpensive. However, time and cost, which unions try to avoid, can aid the employer by reducing the number of grievances that result in binding arbitration awards. One way to protect the employer's interests may be to provide for conventional arbitration, with a proviso that expedited arbitration can be obtained if both parties agree.

Effect of Agency Rules on Arbitration

A very few contracts provide that the rules and regulations of the American Arbitration Association apply to grievance arbitration cases arising under the contract. Such provisions refer only to the rules of this organization. The obvious concern is: What do these rules provide and what impact do they have on the employer's position in an arbitration case?

These rules incorporate some of the more important details upon which the parties might want to agree when adopting an arbitration procedure. Because arbitration often is the final method used to resolve differences, it is important that the parties agree on a procedure suited to their needs before many grievance reach arbitration, so that differences will be kept at a minimum. Individual unions and employers must strive to anticipate their particular needs before bargaining in order to obtain an arbitration procedure that allows them to fulfill their purposes effectively.

Finally, employers should distinguish between a provision that adopts the AAA rules and regulations as governing the arbitration procedure, and a provision that the AAA will merely provide a panel from which the parties will select their arbitrator. In the latter case, the AAA rules and regulations would not be applicable to the arbitration procedure, and the parties often will make their choice by alternately striking one name from the list until only one arbitrator remains available.

Responsibility for Cost of Arbitration

A contract may provide that the party losing the arbitration case shall absorb the expense of the arbitrator.

> Expenses for the arbitration shall be borne by the losing party. Each party shall be responsible for compensating its own representatives and witnesses. . .

The typical prorated costs of an arbitrator usually amount to a few hundred dollars. If this amount is doubled, the cost may prove to be a substantial financial deterrent to filing unfounded grievances, and the tactic can work to the advantage of management. However, arbitrators have been known to compromise awards between the positions of the parties, in which case a question arises over who has lost. The answer must be provided by the arbitrator in his or her award, which may result in a proration anyway.

Copies of Transcript

A few contracts provide that a party requesting a transcript of the proceedings of an arbitration case must provide copies to the other side and to the arbitrator without cost. Transcripts can be long and expensive, but where briefs or subsequent reviews are contemplated, they can be important. If costs are important, this proviso may work to the disadvantage of the party requesting briefs. Management often is the requesting party, providing a slight financial advantage to the other side.

NOTES

1. M. Bowers, *Contract Administration in the Public Sector*, 53 PERL 26, 27 (IPMA, 1976).

2. This definition appeared in 41 percent of all the agreements studied and 45 percent of those agreements containing grievance provisions.

CHAPTER 4

DISCIPLINE AND POLICE OFFICER'S BILL OF RIGHTS

DISCIPLINE

The topic of discipline is important to all employers and employees, whether public or private sector. Disciplinary action is one of the major sources of arbitration case rulings because employees regularly contest such management decisions as suspension or discharge.

In police agencies, discipline plays an even greater role than in most other employment situations, partly because of the unique quasi-military composition of the police service, which calls for strict adherence to command directives and provides swift and sure penalties for officers who do not conform. The nature of the police function is such that public trust is essential to effective administration of justice. Police officers, who must be the primary dispensers of justice, possess a great deal of discretionary power in the way they carry out their task. Where a police officer violates the employer's rules and regulations or criminal statutes, the role of disciplinary alternatives becomes important not only to management and to the officer involved, but also to the community served.

References to discipline or discipline procedures were found in 90 percent of the contracts. Roughly 9 percent contained provisions relating to discipline procedures treated discipline as a management right. The language used by those jurisdictions varied widely. Most jurisdictions covered employee discipline in some detail. A few, however, made only a short reference to the subject.

Standards For Disciplinary Actions

In the absence of a collective bargaining agreement, it is generally agreed that the only restrictions imposed on management's right to discipline employees are those imposed by law.[1] Where there is no express limitation on management's disciplinary rights contained in the bargaining agreement, the same result might also be reached.[2] The majority of agreements studied, however, specified some standard for disciplinary action. Sixty-three percent of those agreements containing discipline provisions and 56 percent of all the agreements studied specified some type of standard for disciplinary action. Many of these agreements provided that disciplinary action would be taken for "cause," "just cause" or "proper cause."

Some arbitrators interpret "cause" to mean a fair and legitimate reason, the equivalent of "just" or "proper" cause, preventing unreasonable action by the employer. Other arbitrators have ruled that by using the unqualified term "cause," the parties intend a relaxed standard, giving employers greater discretion than those held to the just cause standard. However, even this interpretation can prevent an employer from disciplining an employee in an arbitrary or capricious manner.

The absence of any standard or general contract limit to management's right to discipline can create problems of interpretation. As noted above, some arbitrators may find the employer's freedom to discipline employees is relatively unrestricted. Others, however, may infer the just cause standard when no language in the agreement deals specifically with the issue.

The definition of the term "just cause" incorporates a broad range of labor relations jurisprudence. One arbitrator set out the following elements which should be shown to establish just cause for a disciplinary action:[3]

- a legitimate management rule;
- a violation of that rule by the individual being disciplined;
- proper notice of the rule to the individual who has violated it;
- equal enforcement of the rule.

If the employer can show the above elements, the arbitrator must then decide if the discipline imposed is proper based on the act committed and the overall record of the grievant, unless the arbitrator's authority to modify the penalty is constrained by other contract language.

Based on the above standard, the following factors may be used as guidelines for determining whether disciplinary action is for "just cause:"

1. *Notice to the employee of possible or probable consequences of prohibited conduct.* Did management warn employees of consequences of their actions?

2. *Fair and objective investigation.* Before administering discipline, did management try to discover whether the employee did in fact violate a rule or disobey an order?

3. *Consistent administration.* Does management apply its rules, orders, and penalties to all employees without discrimination?

4. *Evidence.* Did management have substantial and compelling proof of guilt?

5. *Timing and method of decision.* Did management discipline the employee because of justifying reasons existing at the time the decision was made?

6. *Relation to employment and job performance.* Was the discipline reasonably related to the safe, efficient, and orderly operation of the employer, rather than to the personal preferences of the employer?

7. *Severity of discipline.* Was the degree of discipline appropriate to the act?

As the gravity of the offense and the form of discipline imposed increase, arbitrators evaluate decisions more carefully. It should be noted the employer has the

"Police officers feel vulnerable to false accusations and aggressive internal investigations, and they demand certain protections during this process."

initial burden of proof in arbitration proceedings involving disciplinary grievances. In most cases of serious discipline, the arbitrator may require the employer to justify his action. In addition, the arbitrator may read a just cause standard into the collective bargaining agreement, interpret "cause" to mean "just cause," or test the action against a standard of reasonableness. Arbitrators may believe that allowing management to discharge employees without justification destroys the element of job security inherent in a collective bargaining agreement. Employers can protect their decisions from this interpretation by specifying in the contract that the employer has discretion to discipline in any manner it decides is necessary, or language that prevents the arbitrator from deciding whether discipline was warranted. For example:

> The arbitrator shall have no power to determine issues such as whether discipline was excessive or warranted, but only to determine whether the employee in question committed the acts alleged by the employer.

About 6 percent of the contracts that referred to discipline contained other standards to measure the validity of disciplinary action. One agreement, for example, allowed discipline only for

> incompetency or misconduct or for committing or having been convicted of a felony or any crime involving moral turpitude . . . .

This standard is too narrow, because it may not include offenses commonly subject to disciplinary action, such as repeated absences or lateness, or nonconformance with other conditions of employment. Employers should retain the right to determine what constitutes an act subject to discipline, without enumerating every possible infringement in the collective bargaining agreement. Another agreement contained a more unusual standard for disciplinary action in its management rights clause which provided for:

> Discipline and discharge of any employee for any cause which will promote the efficiency of the City service. (Hialeah, Florida, and FOP Lodge No. 12.)

More typical, however, was the following example:

> Any action which reflects discredit upon the City service or is a direct hindrance to the effective performance of the municipal government functions shall be considered good cause for disciplinary action. Good cause for disciplinary action against any employee shall include any cause in . . . the . . . Municipal Code and the written Rules and Regulations of the . . . Police Department. (Lincoln, Nebraska, and IBPO Local No. 544.)

The agreements which contained other standards generally specified the cause or ground for discipline. One agreement, for example, contained the following provision:

> Any action which reflects discredit upon the service or is a direct hindrance to the effective performance of the CITY government functions shall be considered good cause for disciplinary action. The following are declared to be good cause for disciplinary action against any employee, though charges may be based upon causes and complaints other than those listed:
>
> (a) Habitual use of alcoholic beverages to excess or the use of narcotics;
>
> (b) Has been adjudged guilty of a crime involving moral turpitude, or infamous or disgraceful conduct;
>
> (c) Partaking of intoxicating beverages; or intoxication while on duty;
>
> (d) Use of abusive or improper treatment to a person in custody, provided the act committed was not necessarily or lawfully done in self-defense or to protect the lives of others, or to prevent the escape of a person lawfully in custody;
>
> (e) Offensive conduct or language toward the public or toward City officers or employees;
>
> (f) Insubordination;
>
> (g) Incompetence to perform the duties of his position;
>
> (h) Negligence in the care and handling of City property;
>
> (i) Violation of any lawful and reasonable official regulation made or given by his superior officer, where such violation or failure to obey amounted to an act of insurbordination or a serious breach of proper discipline or resulted, or might reasonably have been expected to result in loss or injury to the City, to prisoners of the City, or to the public;
>
> (j) Commission of acts or omissions unbecoming an incumbent of the particular office or position held, which render his admonishment, reprimand, suspension, demotion, or discharge necessary or desirable for the economical or efficient conduct of business of the City or for the best interest of the City government;
>
> (k) Willful violation of any of the provisions of the City Charter or any of the rules promulgated thereunder;
>
> (l) Has induced or attempted to induce any officer or employee in the City service to commit an illegal act or to act in violation of any lawful or reasonable departmental or official regulation or order, or has participated therein;
>
> (m) Solicitation or receipt from any person, or participation in, any fee, gift, or other valuable thing in the course of work, when such fee, gift or other valuable thing is given in the hope of expectation of receiving favor or better treatment than that accorded other persons;
>
> (n) Use or attempted bribery to secure an advantage in an examination or promotion;
>
> (o) Absence from duty without leave contrary to the provisions of this agreement, or failure to report after leave of absence has been disapproved or revoked and cancelled by the proper authority; or
>
> (p) Any cause specified in the . . . Municipal Code. (Omaha, Nebraska, and The Omaha Police Union Local No. 1.)

When grounds for discipline are specified, there is a possibility that other unmentioned acts may not be subject to disciplinary sanctions. In cases of serious misconduct, arbitrators generally are likely to hold employees to a reasonable standard of behavior, even if the contract does not mention the action specifically. Management can strengthen its position by including language giving the employer power to discipline employees for other, unspecified acts. The above clause provides a good example of this type of language where it specifically notes that "charges may be based upon causes and complaints other than those listed."

There are advantages to specifying grounds for disciplinary action. Both management and the union have a set of guidelines to help them determine whether particular circumstances are subject to grievance. Also, employees are put on notice as to what to expect if they engage in prohibited conduct.

Progressive Discipline

"Progressive discipline" means less severe forms of discipline may be employed by the employer prior to discharge except in cases of extreme misconduct. Typically clauses calling for progressive discipline set out a procedure mandating the use of progressively more severe forms of discipline, culminating in discharge for certain serious offences. The typical progressive discipline provision may employ some or all of the following steps:

1. Oral reprimand or warning
2. Written reprimand or warning
3. Suspension with loss of pay
4. Demotion
5. Discharge

Even when progressive mesasures are not specified in the collective bargaining agreement, arbitrators often rule that management can impose less severe forms of discipline than discharge. Arbitrators also may hold the employer to a progressive discipline standard even when the agreement does not specify forms of discipline.

REVIEW OF DISCIPLINARY ACTIONS

Disciplinary actions are often subject to the grievance and arbitration procedures of the collective bargaining agreement, or to review by a personnel director, city manager, or mayor. In some contracts, the definition of "grievence" excludes matters of discipline; civil service commissions, police commissions, or other third-party entities review disciplinary actions. Some third-party entities have exclusive jurisdiction over disciplinary review. Others act as advisors and leave final disposition to a designated member of city management. Some collective bargaining agreements allow a disciplined employee to choose review through either the contract's procedures for grievance arbitration or the procedures of a specified third-party entity.

Provisions for disciplinary review in the agreements varied widely. Four general categories are discussed below, with primary consideration given to the impact of the review processes upon managerial authority.

Type I: Little or No Impact

The Type I clause was found in approximately 43 percent of those contracts that referred to discipline. The key characteristic of this clause is that disciplinary actions are not subject to review or reversal by an arbitrator. Therefore, terms of the collective bargaining agreement may have little or no impact on the disciplinary authority of the employer. The police chief, personnel director, city manager, mayor, or a third party entity makes final review of the action. The following is an example of a Type I clause:

> Any person believing himself aggrieved by a penalty or punishment of demotion in or dismissal from service or suspension without pay, or a fine imposed pursuant to the provisions of this Article, may appeal from such determination either by an application to the . . . Municipal Civil Service Commission, or by an application to the Court, in accordance with the provisions of Article 78 of the Civil Practice Law and Rules. If such person elects to appeal to the Commission, he shall file such appeal with the Commission, in writing, within twenty (20) days after receiving written notice of the determination to be reviewed. The decision of the Commission shall be final and conclusive and not subject to further review in any Court. (Buffalo, New York, and Buffalo PBA.)

A variation of this kind of language is a clause which has some impact on the employer's discretion in discipline cases in that certain minor disciplinary actions are reviewable through the grievance arbitration machinery of the collective bargaining agreement:

> Grievances may be submitted as defined, relating to matters contained in this Agreement or which have not been the subject of collective bargaining, except those matters discussed but not agreed upon. Suspensions, dismissals, and reductions in grade are not grievable or arbitrable.
>
> All disciplinary actions including demotions, suspensions, and dismissals of permanent employees, but excluding reprimands and lesser disciplinary actions, shall be appealable through civil service procedures. This section shall not apply to termination of non-permanent or probationary employees or to demotion of permanent employees who fail to complete promotional probationary period to the satisfaction of the Departments for other than disciplinary reasons.

This languages exempts suspensions, dismissals, and reductions in grade from the grievance arbitration provisions of the collective bargaining agreement.

Type II: Great Impact

Under this type of clause, disciplinary action is reviewed through the contract's grievance and arbitration procedures. This category includes both collective bargaining agreements that refer to review only in the definition of a grievable issue, and those that have detailed provisions for review. The Type II clause was found in approximately 24 percent of the contracts that referred to discipline. The following example is characteristic of the Type II clause:

> It is agreed and understood that the County has the right to the maintenance of discipline. Any disciplinary action taken by the County shall be subject to appeal rights as provided in the grievance procedure herein. (New Castle County, Delaware, and FOP Lodge No. 5)

An example of a Type II clause which refers to review by arbitration of grievance procedure in the definition of a grievable issue might be the following:

> Should any differences arise between the employer and the union or between the employer and any employee or group of employees, regarding the effect, interpretation or application of this agreement or any agreement made supplementary hereto, or discipline or discharge, it shall be settled as shown in this article.

When an employer's disciplinary actions are subject to binding arbitral review, management's authority can be limited significantly.

Type III: Employee's Right to Choose Forum

Type III clauses appeared in approximately 25 percent of those agreements which discussed disciplinary procedures. The chief characteristic of this clause is that it allows the disciplined employee to choose a review forum. An example of this type of clause is the following:

> Any employee who has satisfactorily completed his/her probationary period of employment. . .shall have the right to appeal to either the Personnel Board or arbitration, but not both, from a written reprimand, suspension, discharge, or reduction in classification or pay not later than ten (10) calendar days after

receiving notice of such action. There shall be no right of appeal from the Personnel Board to the arbitrator or from the arbitrator to the Personnel Board. (Omaha, Nebraska, and Omaha Police Union Local No. 1.)

A more unusual example from the agreements studied was the following:

> In the event of a disciplinary action involving a suspension, dismissal, removal or termination, and subsequent to a hearing before the Police Commission, an employee may, within ten (10) days of the receipt of said disciplinary decision, elect to appeal said action by initiating an arbitration proceeding in accordance with Section 4A above. Such appeal shall be the exclusive remedy pursuant to the provisions of General Laws, Chapter 150E, Section 8, as amended. (Springfield, Massachusetts, and IBPO Local 364.)

Language about choice of review should specify that an employee who uses the nonarbitration forum automatically forfeits the right to arbitration. Requiring choice of remedies may prevent the possibility of conflicting dispositions of an appeal heard by different forums. Examples of appropriate restrictive language can be found in both of the above examples. Employees considering language for election of appeal remedies must consult the law of the jurisdiction, because statutory or case law may control waiver of employee rights.

Type IV: Silent

Approximately 10 percent of the agreements that discussed discipline contained no specific provision for appeal. Arbitrators often have found disciplinary action to be reviewable even if there is no contractual language saying that it is. For example, where discipline for "just cause" is mentioned in a management rights clause, arbitrators have found justification for review.

Modification of Disciplinary Penalty

None of the clauses discussed above substantially limits the public employer's power to discipline employees. However, under a Type II or Type III clause, decisions can be subject to the arbitration process and reversed or modified. The issue of whether an employee in fact violated the accepted norm is not always the turning point of an arbitration award. Many cases show that, although the employer proved that the employee committed the act in question, the punishment was too great and the arbitrator imposed some lesser form of discipline. Consider the following examples;

1. In *City of Hartford,* 62 LA 1281 (CSBMA 1974), a police officer was found to have physically attacked a prisoner (already under arrest by another jurisdiction) after a high speed chase. The officer was discharged. The arbitrator decided that, inasmuch as the officer had been excited and the injuries could have been minor, the discharge was too severe. Instead, the officer was reinstated after being absent about eight months.

2. In *City of Toledo,* 70 LA 216 (Heinsz, 1971), three officers were removed from the accident investigation unit for low productivity in issuing traffic citations. The arbitrator ordered two of the three reinstated, holding that the transfers were not for just cause.

3. In *City of Portage,* 75 LA 1205 (McDonald, 1980), officers sent to investigate a family squabble used force and abusive language. Both officers were suspended without pay and had to attend a human relations seminar and write a human relations report. The arbitrator found just cause for the imposition of some discipline, but felt that the discipline imposed was excessive. The arbitrator vacated the suspension and ordered reimbursement of back pay for the time suspended.

4. In *City of Purt Huron,* 51 LA 672, a police officer was insubordinate to a superior officer and was given a 30-day suspension without pay. The arbitrator ruled that, although orders must be obeyed and that the officer did commit the alleged acts, because the employee committed a minor technical violation of the collective bargaining agreement, the suspension should be cut to one week.

5. In *City of Ann Arbor,* 59 LA 715, a neutral board of review found a police officer guilty of physically abusing a prisoner and the officer was subsequently discharged. The arbitrator held that the officer should not have committed the acts, but that he should not have been discharged. He was ordered reinstated without back pay.

The above cases demonstrate that arbitrators have a tendency to compromise the disciplinary actions of police departments (even in cases where an officer abused his authority). Arbitrators often modify the disciplinary penalty because of the employee's good work record, because of the employer's prior history of using discipline in similar situations, or because the arbitrator thought the penalty was too harsh.

A negative result of this kind of arbitral compromise of management disciplinary decisions could be that management personnel may hesitate to take disciplinary action because they expect that such actions will not be upheld in arbitration. To avoid these problems, management should negotiate a clause that specifically limits the authority of the arbitrator. The clause should provide that the arbitrator has no power to reverse or modify the penalty imposed by management in any case when the employee did, in fact, commit the act subject to discipline. Management must always consider that when arbitral review is available, arbitrators are reluctant to sustain discharge or lengthy suspensions, often preferring to compromise such penalties by awards of reinstatement or reduction of the suspension. A Type I clause can offer police management the greatest degree of flexibility because it excludes disciplinary decisions from arbitral review and therefore protects the power to discipline.

BILL OF RIGHTS

The strong concern about police officer discipline is further reflected in specified rights of police officers during department investigations and interrogations. These protections are referred to as the police officer bill of rights and were found to exist in about 55 percent of the collective bargaining agreements studied. Generally these clauses are characterized by specifically detailed language concerning where, when, and how interrogation of officers can take place; whether officers have the right to union or legal representation; the use of self-incriminating statements; appeal rights of disciplined officers; and use of polygraph examinations in investigations.

In some states, statutory provisions for the police officer bill of rights have been enacted. This kind of legislation may provide the incentive for including such language in a particular contract. Statutory or not, this type of protective language is being encountered in agreements representing officers in most portions of the nation. A detailed and comprehensive example of such a bill of rights is the following:

EMPLOYEE'S BILL OF RIGHTS

Section 1. No employee shall be ordered or coerced in any manner to submit to a polygraph examination, lie detector test or similar test, or chemical such a sodium pentothol or truth serum tests, or similar tests by whatever name called for any reason unless such member shall demand said examination in writing.

Section 2. No employee shall be discharged, disciplined or in any way discriminated against for refusing or declining to submit to a polygraph examination, lie detector test, or similar test by whatever name called.

Section 3. The Employer or its agent shall not utilize any type of recording device or electronic surveillance device to record or transcribe any conversation between the Employer and any employee unless disclosure of such device is made to the employee prior to such conversation.

Section 4. Except when on duty or when acting in his official capacity, no employee shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

Section 5. Employees shall have the right to bring civil suit against any person, groups of persons, or any organizations or corporations or the head of such organizations or corporations, for damages suffered, either pecuniary or otherwise, or for abridgement of their civil rights arising out of the officer's performance of official duties.

Section 6. Any employee shall have the right to examine any and all personnel files maintained by the employer regarding the employee, with the exception of employment letters of recommendation, upon written request during the normal business hours construed to be 9:00 a.m. to 5:00 p.m. Monday through Friday, excepting holidays.

Section 7. The employee's files shall not be made available to any person or organization other than the Employer and employee without the employee's expressed authorization, unless pursuant to Court order.

Section 8. No employee shall be required or requested for purposes of assignment or other personnel action, to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his or her family or household), unless such information is obtained under proper legal procedures or tends to indicate a conflict of interest with respect to the performance of his official duties. This paragraph shall not prevent inquiries made by authorized agents of legally constituted agencies in accordance with acceptable and legally established procedures.

Section 9. Whenever any employee is under investigation or subjected to interrogation by members of this or any other investigative agency, for any reason which could lead to disciplinary action, demotion, dismissal, or criminal charges, such investigation or interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, preferably but not necessarily limited to when the employee is on duty.

(b) Any Employee, at his request, shall have the right to be represented by counsel and/or Association representatives of his choice prior to and during the making of any statements, written or verbal, concerning any act, incident, or occurrence from which disciplinary action, criminal prosecution, or civil suit may possibly result.

(c) The employee under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation.

(d) The employee under investigation shall be informed of the nature of the investigation prior to any interrogatories and he shall be informed of the name of the complainant.

(e) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(f) The employee under interrogation shall not be subjected to offensive language or threatened with transfer, dismissal or any disciplinary action. No promise or reward shall be made as an inducement to answering any questions.

(g) The complete interrogation of an employee, including all recess periods, shall be recorded, and there shall be no unrecorded questions or statements.

(h) If the employee under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

Section 10. Employees will not be deprived of liberty or property without due process of law nor denied the equal protection of the laws.

Section 11. Any employee involved in a shooting shall not be bound as a condition of employment to make an oral or written statement, to include a Preliminary Crime Report, until such time as the employee has been able to contact an Association official, and has had reasonable time to discuss the incident with an Association attorney. The attorney shall then be able to counsel the officer during his Preliminary Crime Report or any other oral or written statement that may be required. Subject to consultation with the attorney, under all circumstances, an employee shall be required to submit his PCR as a condition of employment.

Section 12. An employee's locker shall not be opened for any reason including inspection, without the Employee or his Association representative present. In no event, will an employee's locker be opened so as to search through said employee's personal property in said locker, without the employee's consent.

Section 13. Supervisory officers shall treat employees under their command in a respectful, dignified and professional manner and shall give disciplinary advice to an employee in private, not in the presence of other employees, if possible.

Section 14. No employee will be favored or discriminated against, nor disciplined, demoted, or transferred for exercising any of the above rights or any rights afforded him or her by this contract. (Macomb County, Michigan, and Macomb County Deputy Sheriffs Association.)

The provisions of police officer bill of rights clauses obviously are designed to protect the rights of officers during interrogation and investigation of alleged serious misconduct, including criminal activity. Police officers feel vulnerable to false accusations and aggressive internal investigations, and they demand certain protections during this process. One can seriously question, however, the need for such elaborate language in disciplinary actions of lesser magnitude such as tardiness, abuse of sick leave, or insubordination. For years, public and private sector employers and unions have dealt with these disciplinary issues without the need for exhaustive contract language. It

seems logical to assume that, where the stakes are high for the employee concerned detailed procedures are to be justified in consideration of the officer's legitimate right to due process. Where the potential discipline is of lesser consequence the parties may not need detailed procedures. It is very important that agreed-upon procedures do not unreasonably impede the police chief in thoroughly investigating the issues.

As a practical matter, procedural errors are made on a regular basis. Thus, the larger the number of procedural hoops to be jumped, the greater the likelihood of a procedural error. Procedural errors can be the basis for reversal of disciplinary action. Fear of reversal for procedural reasons may encourage supervisory personnel to overlook unacceptable behavior rather than take appropriate corrective action. To this extent, detailed procedural rules may have a serious impact on the employer's ability to operate a highly disciplined department. If the parties are seriously contemplating including detailed rights of an employee in a collective bargaining agreement, these rights should:

1. apply to a narrow set of circumstances;

2. not put undue reporting or time requirements upon management;

3. retain for management the authority to mete out discipline and investigate facts surrounding charges;

4. not contain procedural "traps" which could lead to later reversal of disciplinary action where alleged misconduct is proven;

5. not contain language unduly interfering with the employer's legitimate management rights.

NOTES

1. Elkouri and Elkouri, p. 611

2. Elkouri and Elkouri, p. 612

3. *City of Toledo,* 70 LA 216, 220 (Neinsz, 1977).

CHAPTER 5

CIVIL SERVICE AND THIRD PARTY ENTITIES

The effect of collective bargaining agreements on other systems regulating police personnel matters is important to police management. State and local statutes that create entities like civil service commissions, fire and police boards, and personnel boards, often predate passage of laws requiring bargining with public employees. Collective bargaining laws often contain provisions that require the employer to negotiate about wages, hours and certain conditions of employment. Many topics within the power of third party entities are also topics that are determined to be within the required scope of negotiations under collective bargaining statutes. Some commentators believe collective bargaining will eventually spell the end of the era of civil service type regulation, except perhaps in an area such as testing and selection of applicants. This subject, however, is still unsettled and it is quite likely that conflicts may occur between civil service and police commissions and the collective bargainig process.

Analysis of applicable state statutes, rules, and case law should determine which procedure will prevail. For example, in Texas collective bargaining contracts can supersede state and local civil service rules if the parties so provide in the bargaining agreement. On the other hand, the Iowa collective bargaining statute states that any provision of a bargaining agreement inconsistent with the Iowa statute is unenforceable. Where state legislatures have not regulated the relationship between civil service bodies and the provisions of collective bargaining agreements, traditional or administrative decisions may provide guidance for employers.

CONTRACT LANGUAGE THAT SPECIFIED JURISDICTION

Because of the variety of state legislation involved and the unsettled nature of the subject area, treatment of this issue defies uniform analysis. Civil service systems or other third party entities have been referred to in about 84 percent of the collective bargaining agreements studied. Where these entities are mentioned, the results are very often divergent. Our study attempted to divide the clauses referring to civil or third party entities into five major categories:

Type I. The powers of these civil service entities are not diminished by the collective bargaining agreement.

Type II. The powers of these civil service entities are subject to the provisions of the collective bargaining agreement.

Type III. Employees may choose to appeal to the civil service body or to the collective bargaining agreement grievance procedure in cases involving discipline.

Type IV. Employees may choose to appeal to the civil service entity or to the collective bargaining agreement grievance procedure regarding *all* relevant matters.

Type V. The agreement refers to civil service entities without specifying any preservation of powers.

Type I: Preserving Authority

Approximately one-third (34 percent) of all the clauses referring to civil service or third party entities provided that the power of such bodies would not be diminished by the collective bargaining agreement. That is, such bodies would retain certain jurisdictional prerogatives, including the freedom to regulate appropriate matters relating to bargaining unit employees. Most of these agreements provided for a complete protection of powers. Others referred only to matters concerning employee discipline. Typically, the pertinent language occurred in the agreement's grievance procedure. The grievance procedure of one agreement, for example, contained the following language:

> Any matter which is subject to the jurisdiction of the Civil Service Commission (as for example, discharge or suspension) . . . shall not be the subject of any grievance or arbitration hereunder. (Boston, Massachusetts, and the Boston Police Benevolent Association.)

Another agreement contained the following clause within its definition of a grievance:

> The grievance procedure herein established shall have no application to matters over which the Civil Service Commission has jurisdiction pursuant to the County Charter or rules adopted thereunder. (Alameda County, California, and the Alameda Deputy Sheriffs Association.)

Other agreements allowed discharges, demotions, suspensions or other matters to be processed as grievances, but required that the third party make the final review. An example of this would be the following:

> If the subject matter of the grievance is within the statutory authority of the Police Civil Service Commission and/or the Board of Public Safety, then the aggrieved officer shall be advised by the Fraternal Order of Police Executive Board that he may appeal this decision to the appropriate board or commission, and his final appeal being that of legal recourse in the appropriate court. (Evansville, Indiana, and FOP Lodge 73.)

The language of clauses in this category denies the arbitrator jurisdiction to decide certain issues. Such language is important because a later court review of an award by an arbitrator in these matters may render the award null and void because the arbitrator exceeded his or her contractual jurisdiction. Arbitration awards rarely are overturned, but exceeding jurisdictional boundaries is one of the few legal theories which has been successful in court. In 38 percent of all Type I clauses a provision provided that the third party entity had exclusive jurisdiction to hear appeals of disciplinary actions. An arbitrator who fails to recognize this limitation on his jurisdiction would risk judicial reversal in subsequent proceedings.

Type II: Limited Jurisdiction

Approximately 8 percent of the clauses provided that decisions traditionally reserved to such bodies were subject to the provisions of the negotiated bargaining agreement. That is, the jurisdiction of the third party entities is limited by the terms of the collective bargaining agreement because either its decisions are reviewable by

resort to arbitration in certain circumstances, or because specific provisions state that the collective bargaining agreement prevails in cases of conflict. Most of the agreements in this category provided that the civil service entity could hear the employee grievances, but that a dissatisfied grievant could later appeal to binding arbitration. The following is an example of language providing for review of third party entity decisions:

> If . . . (the) grievance is not resolved to the satisfaction of the Union by the Police Board within five (5) days after such meeting, the Union may present such grievance in writing within seven (7) days thereafter to the Civil Service Commission. Within seven (7) days after said Civil Service Commission received such grievance, the Commissison shall arrange to and shall meet with representatives of the Union for the purpose of adjusting or resolving such grievance. This Step (D) may be waived by agreement of all the parties.
>
> If such grievance is not resolved to the satisfaction of the Union by the Civil Service Commission within seven (7) working days afer such meeting, the Union may within ten (10) days thereafter submit the dispute to arbitration by the Connecticut State Board of Mediation and Arbitration. Said Board shall hear and act on such dispute in accordance with its rules and render a decision which shall be final and binding on all the parties. (Bridgeport, Connecticut, and AFSCME Local 159.)

The following is an example of language in which the collective bargaining agreement preempts third party entity powers:

> The provisions of this contract shall take precedence over all State and local civil service provisions which are in conflict herewith, including, for example and not by way of limitation, any contrary provisions in. . .(the) City Charter of the City; ordinances of the City; Rules and Regulations of the Firemen's and Policemen's Civil Service Commission; and Rules and Orders of the Police Department of the City.

When the provisions of a collective bargaining agreement supplant or allow the review or modification of decisions by civil service bodies, the powers of such bodies are diminished accordingly. This could be beneficial or detrimental to management, depending upon the particular situation. For example, if an employer's disciplinary decisions are rarely, if ever, upheld by an employee-oriented civil service commission, the employer may find binding arbitration of disciplinary cases an acceptable alternative to the civil service commission. However, the opposite may also occur, and in these situations a Type II clause that supplants the powers of a civil service body would be an unattractive alternative.

Type III: Election in Discipline Cases

About 12 percent of all the clauses dealing with third party entities allowed an employee to choose either to pursue appeal rights contained in the collective bargaining agreement or to resort to civil service appeal rights. The language of these clauses generally falls into two categories. Under the first category, pursuit of one alternative of appeal consitituted an automatic waiver of the other avenue of appeal. The following is an example of this category:

> If the grievance concerns disciplinary action, the employee or Association may elect to submit such grievance to the civil service board, or the Association may elect to submit the grievance to arbitration, but only one such avenue of redress may be selected. Provided, however, that in accordance with the civil service rules, disciplinary action can be appealed to the civil service board only in the case of suspension, fine or discharge. If arbitration is selected, it is agreed that the decision of the arbitrator shall be final and binding on all the parties. . . . (Oakland, California, and the Oakland Police Officers Association.)

The other general category involved clauses which required that the election of appeal rights be written. The following is an example of such a clause:

> An employee has the right to appeal any disciplinary action taken by the sheriff or his representative by proceeding

CIVIL SERVICE AND THIRD-PARTY ENTITIES

	Number	Percent
The power of the third-party entity is not diminished by the contract	47	34
Third-party decisions are subject to review through arbitration or top management	11	8
Employee may choose between third-party or grievance and arbitration procedure in disciplinary matters	17	12
Employees may choose between third-party or grievance and arbitration procedure in any relevant matter	16	11
Contracts containing reference to a third-party entity, but no reference is made to its power in grievance or discipline matters	33	24
Contracts not referring to third-party entities	23	16

NOTE: A few contracts referred to more than one third-party entity; therefore total is greater than 140. See comprehensive chart for more information.

either in accordance with Act 298 of the Public Acts of 1966 (i.e. the civil service commission), or by filing a grievance which is automatically processed to Step 3 of the grievance procedure. In the event the disciplinary action is appealed through the grievance procedure; and said grievance is not satisfactorily settled . . . it may be appealed to arbitration in acccordance with (Article VI, Step 5).

An employee's decision to appeal disciplinary action pursuant to the contractual grievance procedure shall be made in lieu of his appeal rights under Act 298. Notice of the option chosen for appealing disciplinary action shall be given in conjunction with the required notice of appeal . . . on the following (notice of appeal—option and waiver) form. (Macomb County, Michigan, and the Macomb County Deputy Sheriffs Association.)

On the option and waiver form, the employee had to choose to pursue either the grievance provisions of the collective bargaining agreement, or request a hearing from the local civil service commission. The form also provided that by choosing one or the other option, the employee "intelligently and voluntarily" waived and relinquished whatever rights he or she may have possessed under the rejected option.

Type IV: Election in Other Cases

Approximately 11 percent of all the clauses allowed the employee or the union to choose between the grievance procedure and third party forum either in all matters or in those matters over which the third party had jurisdiction. The following is an example of a Type IV clause:

In the event that any difference or dispute shall arise between the city and the PBA, or its members employed by the city, over the application and interpretation of the terms of this Agreement . . . the matter may be referred to the civil service commission or the matter may be referred to arbitration by the city or the PBA. (Elizabeth, New Jersey, and the Police Benevolent Association Local No. 4.)

The following is an example of a Type IV clause wherein a written waiver of the third party appeal is required:

Any dispute arising between any employee(s) and the employer which is submitted as a grievance for resolution under this Agreement, shall not be arbitrable under any section of this Agreement, if such dispute or grievance is a suitable matter for submission to the Massachusetts Civil Service Commission unless the employee in writing waives his rights of Civil Service. (New Bedford, Massachusetts, and the New Bedford Police Benevolent Association.)

Generally, the Type IV clause and the Type III clause differ in the subject matter they cover. The Type III clause applies only to disciplinary cases. The Type IV clause, on the other hand, refers to matters appealable to civil service bodies, and may include both disciplinary actions and other issues, depending on the jurisdictional powers of the entity.

Both clauses clarify the consequences of the selection of a particular forum for resolving a contested matter. The availability of more than one appeals route raises the problems of excess expense, undue delays, uncertain and potentially conflicting results. These problems may be solved in the bargaining agreement by specifying whether, and under what circumstances, parties can use civil service appeals to resolve disputes. Negotiators should note, however, that review bodies may question whether an employer and union can negotiate language that results in the waiver of statutory rights of police department employees to appeal to civil service bodies. For example, a clause may require employees who file grievances or request arbitration under the terms of the collective bargaining agreement to waive statutory rights of civil service appeals. But can the parties agree to waive these rights on behalf of individual employees? Analysis of applicable state statutes, rules, and case law may provide some answers.

One way to avoid this problem is to provide in the election of remedies clause that access to the collective bargaining agreement's dispute resolution procedures is precluded when an employee or the union has sought appeal elsewhere. Employer representatives can defend this language by arguing that no statutory rights of employees have been abrogated, because the parties, as part of their bargaining duty, are free to negotiate both the grievance procedure and limits to recourse it contains. This alternative may encourage employees to select one appeals route, without having the employer risk a later determination that the required waiver violated statutory guarantees of individual employees.

Type V: No Reference to Jurisdiction

Approximately 21 percent of the clauses referring to civil service entities mentioned the third party entity without giving information in the agreement on either the third party's relations to the grievance procedure, or the extent of the third party's jurisdiction. When employees have rights to challenge employer actions such as discipline, layoff, promotion and transfer through civil service appeals in addition to grievance arbitration rights under a collective bargaining agreement, problems of multiple forums can occur. To avoid these problems, employers should negotiate contract language reconciling the potential confict between the jurisdiction of the civil service bodies and the provisions of a collective bargaining agreement. The various clauses mentioned above are examples of ways in which this issue can be settled.

CHAPTER 6

STAFFING REQUIREMENTS

Staffing or "manning" requirements concern the right of management to set and maintain levels of staffing on a department or unit basis. To the extent that the bargaining agreement either implicitly or explicitly places restrictions on this right, the ability of management to deliver protective services in a cost efficient manner may be significantly hampered. In an era when municipal employers are increasingly faced with the contradictory pressures of having to deliver more services with declining revenues, the right of management to determine staffing levels in a cost efficient manner, unfettered by the collective bargaining agreement, takes on increasing importance.

AVOIDING LANGUAGE THAT COULD FREEZE STAFFING LEVELS

When negotiating collective bargaining agreements, municipal employers should avoid any language which may limit management's rights to determine personnel requirements. In a few jurisdictions, staffing issues may be a mandatory subject of bargaining and not subject to simple unilateral determination by the employer. Even in those jurisdictions where staffing is not a mandatory subject, the employer may be obligated to bargain on the *effects* of any staffing decision. It should be noted, however, that even if staffing issues are considered mandatory subjects of bargaining, an employer is not required to accept a restrictive staffing provision.

A significant majority of agreements studied avoided language which tended to freeze staffing levels. These restrictive provisions create several obstacles. First, they may hamper an employer's ability to introduce technological changes or to respond to changing circumstances. In addition, these provisions may prove to be a serious roadblock to an employer's attempts to effect staff reductions as required. Finally, to the extent that such provisions require constant staffing, they can cause employers to incur overtime pay obligations resulting from temporary employee absences because of illness, injury, vacation or a personal leave.

One example of language which may prove to be a significant limitation on the right of management to determine and to change personnel requirements is the following:

> It shall be stipulated by letter of agreement and intent that no police officer shall be laid off in 1980. No reduction in the table of organization shall occur, either by attrition, retirements, resignations, death or dismissals. Two hundred forty one (241) officers including the chief of police shall be maintained. (Evansville, Indiana, and FOP Lodge No. 73.)

Another example of language which tends to freeze staffing levels is the following:

> The parties hereto agree that in order to protect the lives and safety of the public . . . the following minimum personnel will be required in each District or Station on each relief as set out hereafter. The assignment of personnel within the District or Station shall be in and within the discretion of the Commander of the particular District or Station at the time involved. But, in no event, will the numbers of personnel be less than those as set out below:
>
> HEADQUARTERS—Day Tour of Duty
> Five Patrol Officers
>
> Station 3—Day Tour of Duty
> Five Patrol Officers
>
> Station 4—Day Tour of Duty
> Five Patrol Officers
>
> HEADQUARTERS—Night Tours of Duty on the third relief
> Nine Patrol Officers
> and on the first relief
> Eight Patrol Officers
>
> Station 3—Night Tours of Duty on the third relief
> Eight Patrol Officers
> and on the first relief
> Seven Patrol Officers
>
> Station 2—Night Tours of Duty on the third relief
> Six Patrol Officers
> and on the first relief
> Five Patrol Officers
>
> There shall be a minimum of four ranking officers on duty through the City at all times. (New Bedford Massachusetts, and the New Bedford Police Association.)

Language such as this, which sets fixed minimum levels on staffing, is not in the interest of a municipal employer. On the one hand, such language as above reinforces the employer's right to restrict vacation and to require overtime. On the other hand, such language may also force management to pay overtime to ensure that the minimum level is kept, and may also prohibit management from attempting a reduction in force. Finally, such language may prevent an employer from reallocating personnel in a more cost efficient manner.

LANGUAGE IMPLICITLY RESERVING MANAGEMENT RIGHTS TO ESTABLISH STAFFING REQUIREMENTS

About one-fifth of all the agreements studied contained language which may implicitly reserve to management the right to determine and change staffing requirements. Many agreements contain language to the effect that management reserves the right to determine "the methods, means and personnel" by which operations are to be conducted. Such language may arguably support an unfettered right on the part of management to determine or change personnel requirements. Use of this type of language would more strongly imply an unfettered management discretion if the implication were reinforced by other sections in the management rights clause. An example of this would be the following:

> Except as specifically modified by this agreement, the employer shall have, in addition to all other powers, duties and rights established by constitutional provision, statute, ordinance, charter or special act, the exclusive power, duty and right to:
>
> Hire, promote, demote, transfer, assign and retain employees in positions within the agency.

Relieve employees from duties because of lack of work or other legitimate reasons.

Determine and implement methods, means, assignments and personnel by which city operations are to be conducted.

To take such actions as may be necessary to carry out the mission of the city government. (Des Moines, Iowa.)

Other clauses, which did not use the "methods, means and personnel" language might also implicitly reserve to management an exclusive right to determine staffing requirements. An example of such language would be the following:

It is agreed that the following rights and responsibilities, among others, are reserved for management and are not subject to collective bargaining:

. . . The right to discipline and discharge for just cause; the right to determine the number of persons to be employed, including the right to lay off personnel for lack of work or funds or when such continuation of work would be wasteful or unproductive; the right to determine reasonable schedules of work; to determine the scheduled overtime; to schedule employees to work as the city determines is necessary, to establish the methods and processes by which such work is to be performed, and to take whatever actions are necessary in emergencies in order to ensure the proper functioning of the city. (Allentown, Pennsylvania, and FOP Lodge No. 10.)

Just over one-third of the agreements studied contained language that unequivocally and explicitly reserved to management the right to determine personnel requirements. Very often these clauses appeared exclusively in the management's rights clause of the collective bargaining agreement. For example:

Specifically the city's exclusive management rights include, but are not limited to the sole right to . . . determine staffing patterns, including, but not limited to assignment of employees, numbers to be employed, duties to be performed, qualifications required and areas to be worked and to perform all other functions of management and operations which are not otherwise limited by the terms of this Agreement. (Cleveland, Ohio, and the Cleveland Police Patrolman's Association.)

Other agreements contained clauses not only in the management rights clause but in other clauses within the bargaining agreement. An example of this is the following:

(From management rights clause):

To determine the necessity, organization, implementation, and determination of any service or activity conducted by the city or other government jurisdictions and to expand or diminish police services . . . to direct, supervise, recruit, select, hire, evaluate, promote, transfer . . . to determine and/or change the policies, facilities, methods, . . . organizational structure and allocate and assign work by which the city police operations are to be conducted . . . to determine the nature, manner, means, extent, type, time, quantity, quality, standard, and level of police services to be approved by the public . . . to determine qualifications skills, abilities, knowledge, selection procedures and standards, job classification, job specification, and to reallocate and reclassify employees . . .

(From vacation scheduling section):
Division commanders will try to provide every unit in their division who has requested vacation time during the period June 15 though September 15 with at least one week's vacation during this period . . . without violating minimum approved division staffing levels. (Glendale, California, and the Glendale Police Officers' Association.)

Finally, other agreements specifically reserved the right of the city to determine staffing, but did so outside the management rights clause. One agreement, for example, explicitly reserved the right to "determine staffing levels on the various shifts for all ranks" within a clause on "hours of work and duty assignments." (Madison, Wisconsin, and the Madison Professional Police Officers' Association.) Another agreement contained a parenthetical in the seniority clause which stated that when "considering manning levels . . . the ruling of the chief shall be final." (Oklahoma City, Oklahoma, and FOP Lodge No. 123.)

Whenever possible, employers should negotiate language that expressly and unequivocally reserves to the city the right to set and modify personnel requirements. Even in the absence of an express management rights clause dealing with staffing, however, arbitrators may still tend to defer to the employer and uphold management's staffing decisions if the altered schedule neither creates safety and health hazards nor results in an excessive work load for the remaining employees. However, even where the right to make decisions concerning personnel requirements has been explicitly reserved, other problems may occur. One problem may be that other language within the bargaining agreement modifies the otherwise explicit and unequivocal reservation of a management right in this area. For example, one agreement contained the following language in its management rights clause:

It is the city's right to hire . . . retire, lay off, promote, assign or transfer employees to any job or any work, any time or any where; to increase or to decrease the

STAFFING REQUIREMENTS

	Number	Percent
Contracts containing specific language that confers the right to determine staffing requirements on management	50	36
Contracts containing language implying management has the right to determine staffing requirements	30	21
Contracts containing other language on staffing requirements	15	11
Contracts not referring to staffing requirements	45	32

working force; to determine the number and size of the work shifts, to determine the number of employees assigned to any work or any job; to determine the hours of work per day of week. (Memphis, Tennessee, and the I.U.P.A.)

Such a clause would appear to explicitly reserve to management an unfettered right to make decisions concerning manpower requirements. However, if the agreement also contained a clause which specified fixed manning levels, the otherwise unfettered rights can be effectively limited. In short, personnel requirements are best kept away from negotiation.

CHAPTER 7

REDUCTIONS IN FORCE

Contractual provisions for layoff and recall of police personnel become increasingly important as public sector employers face budgetary restraints. At present, only 26 percent of the contracts reviewed contain no express provision governing reduction in the police workforce. This may be due to the heightened concern over layoffs on the part of both employers and employees. Those contracts with RIF provisions, however, vary in the nature and extent of provisions. When negotiating RIF provisions proper language should be used to ensure the public employer can meet changing workforce needs, financial restraints and other policy requirements such as affirmative action.

Provisions for reduction in the police force take many forms. The most restrictive are provisions in a few collective bargaining agreements which prohibit the employer from making any layoff during the term of the contract. For example, the Evansville, Indiana, police contract states: "It shall be stipulated by letter of agreement and intent that no police officer shall be laid off in 1980. No reduction in the table of organization shall occur, either by attrition, retirement, resignations, death or dismissals."

Such provisions may not be desirable since they can severely burden the employer by eliminating layoffs as an option available to the city. Employers should also avoid provisions which allow reductions in force under limited circumstances. By naming those circumstances in which layoffs are warranted, a contract may be construed to exclude the possibility of layoffs for other unanticipated circumstances. Other contracts avoid any outright prohibition against layoff, but nevertheless specify such matters as the criteria for selecting employees for layoff, the order of recall, and the right of employees selected for layoff to take the jobs of, or "bump," less senior employees in lower job classifications.

JUSTIFICATION FOR LAYOFF

Of the contracts containing RIF provisions, 43 percent conditions the employer's right to reduce the workforce on special facts or circumstances.

Necessity

One approach requires staff reductions be "necessary." Most agreements of this kind contain language to the effect that:

> Whenever it becomes necessary to reduce the number of County employees represented by the Association in any position in the classified service, the Sheriff shall notify the Director of the Department of Personnel of the number of employees to be laid off. (Milwaukee County, Wisconsin, Sheriffs.)

The necessity standard, found in 9 percent of the contracts studied, may not be the best choice. Its use raises questions as to when circumstances constitute a necessity. Because "necessary" implies inevitability, its appearance in a collective bargaining agreement could force the employer to show that no other alternatives to layoff exist. The fact that laying off employees would increase department efficiency probably would not meet the "necessity" requirement. For example, the city might want to reassign police dispatch work to lower paid civilian personnel. If this resulted in layoffs of department personnel, the employer's decision to lay off might be invalidated by an arbitrator because the reduction in force, although producing greater efficiency, was not "necessary." To keep open options that promote efficiency and economy, employers should avoid the "necessity" standard and variants of it.

Specific Circumstances

A second method, listing the specific circumstances that can trigger a layoff, may also be unacceptable. A third of the contracts studied include language specifying layoff circumstances, but the extent of enumeration varies between contracts. Some provisions are very restrictive. For example, one provides for "(n)o layoffs. . .except in accordance with the Emergency Act." (New York City, New York.) More common language, however, provides for layoff because of "lack of work, lack of funds, or reorganization." (Des Moines, Iowa.) As with "necessity," this leads to problems of interpretation. For example, what do "lack of work," "lack of funds," or "reorganization" mean? Is "lack of funds" equivalent to a "budget crisis?"

Another problem is that the language may not address all conceivable situations when a reduction in force would be desirable. Arbitrators frequently invoke the principle that expressly addressing one or more factual circumstances in a labor agreement indicates a party's intention to exclude others. An example of arbitral reaction to circumstantial RIF provisions appears in an award issued by Arbitrator Sembower in 1970. In that case, the city decided to lay off employees, saying that due to conditions beyond its control, it lacked funds to offer continued employment. The collective bargaining agreement provided as follows:

> The City reserves the right to layoff for lack of work or funds, or for the occurrence of conditions beyond the control of the City where such continuation of work would be wasteful and unproductive.

The arbitrator invalidated the layoff because the city council could authorize emergency funding, and thus there was no real lack of funds. Arbitrator Sembower's holding demonstrates the pitfalls of such a provision. He concluded that the contract "sets up four criteria whereby the city may layoff workers . . . (and) none of the four criteria is present," so the layoff must be viewed as a violation of contract provisions.

In order to make best use of police personnel and effectively adjust to budgetary constraints, it is advisable that employers do not include language that either recites those limited situations "justifying" layoff, or uses the "necessity" requirement. The best approach is to avoid any restrictions on management's ability to determine when, and under what circumstances, a reduction in force will occur.

If limitations on the employer's right to reduce staff cannot be avoided, the employer should include the phrase ". . . or for other legitimate reasons . . . ." For example, the police agreement in Hartford, Connecticut, contains the following lan-

guage: "(T)he city will continue to have, whether exercised or not, all rights, powers and authority heretofore existing, including . . . relieve its employees from duty because of lack of work or for other legitimate reasons."

ORDER OF LAYOFF

The selection of employees for layoff should, whenever possible, be based on considerations of individual ability, competence, and skill, as well as the needs of the department. Ideally, employers should try to preserve their right to retain the best employees when layoffs are necessary. The absence of language covering reductions in force will preserve the prerogative of the employer to make such decisions.

Language like the following from the previous study can also preserve the employer's freedom of action:

> In the event of a layoff, the police chief or his designee will determine the number of employees to be laid off and, in consultation with such personnel and on the basis of such criteria as he deems appropriate, will select the individual employees to be laid off.

An alternative to the above is language that specifies the appropriate "qualifications" factors. For example:

> In the event of a layoff, the police chief or his designee will determine the number of employees to be laid off and, in consultation with such other persons as he deems appropriate, will select the individual employee(s) to be laid off. The selection of employees for layoff will be based upon such factors, used relatively, as demonstrated ability, competency, and skill of the employee(s) as well as the needs of the department as these factors are evaluated and assessed by the department.

Seniority

Unions usually try to secure a single criterion for selecting the employees for layoff: seniority. Approximately 35 percent of the contracts specify that seniority is the sole criterion in selecting employees for layoff. Such an approach may result in the layoff of more qualifed, conscientious employees, and could lead to a situation where the remaining employees are unable to perform all of the duties in question.

If an employer must concede to seniority in reductions in force, it should secure language making seniority only one of a number of factors. One agreement, for example, provides that: "(s)eniority shall be used as a factor consistent with established Civil Service procedures in . . . determination of layoffs." (Phoenix, Arizona.) This implies seniority may be considered with other criteria, such as demonstrated ability and skill levels, past experience and training, and the needs of the police department. Contract language can provide that when employees' ability, competence, past experience and training are relatively equal, seniority will determine the order of layoff.

REDUCTIONS IN FORCE

	Number	Percent
Contracts specifying circumstances that justify a layoff	46	33
Contracts treating layoffs as a management right	37	26
Contracts using the standard of necessity for justifying a layoff	13	9
Contracts calling for seniority as the exclusive criterion for order of layoffs	49	35
Contracts calling for seniority to be among the criteria for order of layoffs	6	4
Contracts with other reduction in force languages	8	6
Contracts not referring to reductions in force	37	26

Finally, if strict seniority cannot be avoided—that is, if seniority *must* determine which employees will be laid off—managers should try to keep from involving the entire department and should endeavor to confine layoffs and seniority to established organizational and operational units of the department. Most agreements of this type provide:

> Layoffs shall be by job classification according to reverse order of seniority as determined by total continuous County civil service . . . (San Mateo County, California.)

This approach sidesteps the problem of less senior employees in unaffected positions being replaced by more senior employees in the affected positions.

Departmentwide seniority is common. The bargaining agreement of Hartford, Connecticut, provides that "in the case of. . .layoffs seniority shall be determined by the employee's total length of service in the department."

ORDER OF RECALL

Once a contract contains suitable provisions for laying off employees, it is preferable to base recall on qualifications. An appropriate provision might be:

> The Commission shall determine this order based upon considerations of work requirements, the efficiency and conduct of individual employees, their length of service, and the recommendation of the Chief of Police. (Stockton, California.)

If management discretion for recall cannot be preserved, the order of recall can simply mirror the order in which the employees were laid off. Additionally, the recall language should contain an express qualification that returning employees be qualified to perform the duties to which they are being recalled. Language like the following will protect the employer from recall of employees who are incapable of performing available work:

> Employees on layoff shall be recalled in

the reverse order of their layoff provided only those recalled have the ability to perform the available work. (Baltimore County, Maryland.)

Mechanics of Recall

Provisions for reduction in staff usually specify the method of recall notification. Doing so is advisable in order to clarify the obligations of both the employer and employee. Recommended language typically provides:

> Employees in layoff status will retain recall rights for twelve (12) months and shall have preference to work over applicants on eligibility lists. Recall will be made by certified mail to the last address in the employee's record, along with any address on file.... The employee must, within seven (7) days of the certified receipt date, signify their intention of returning to work to the office of the Police Department Personnel and Training Division. (Orlando, Florida.)

LAYOFFS AND EQUAL EMPLOYMENT OPPORTUNITY

Some cities have found themselves caught between two competing interests in layoff situations: the requirement to observe seniority in laying off employees, and the requirement to achieve a greater percentage of minority and female employees in a department as part of an affirmative action plan, a consent decree with the U.S. Department of Justice, or conciliation agreement with the U.S. Equal Employment Opportunity Commission. As of this writing no clear guidance is available from court decisions over this issue. Following is a brief summary of the major court decisions on this issue.

1. *International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).*

The Supreme Court held that a bona fide seniority system is lawful under Title VII of the 1964 Civil Rights Act, even if it might perpetuate the effects of discrimination. However, the decision does not necessarily apply to suits under Section 1983 of the 1873 Civil Rights Act, which makes it unlawful for a government official to abridge another's civil rights.

2. *Youngblood v. Dalzell, 568 F 2d 506 (6th Cir. 1978).*

The U.S. Court of Appeals for the Sixth Circuit ruled that Cincinnati, Ohio could lay off fire department employees in reverse seniority order despite a consent decree directing the city to increase the percentage of minority fire fighters. The court noted that the city never admitted to discriminatory hiring practices, and it ruled that nothing in the decree imposed a duty on the city not to reduce the size of the department even though the layoffs would reduce the percentage of minority of fire fighters. Ohio state law, rather than collective bargaining agreements, mandates "last hired-first fired" policies for layoffs.

3. *Brown v. Neeb, Nos. 80-3468, 3476 (6th Cir. March 3, 1981).*

The Sixth Circuit took an opposite approach in this case involving Toledo, Ohio's fire department. The court upheld a lower court ruling that the Federal District Court had the power to amend a consent decree to deal with layoffs. The Circuit Court differentiated Toledo's case from Cincinnati's by noting that Toledo affirmed its commitment "to erase any vestiges of past employment discrimination within its municipal government." Toledo agreed to recall fire fighters laid off in violation of the decision, and to order any future layoffs proportionately among minority and non-minority fire fighters.

4. *Statts v. Memphis Fire Department et. al.*

The Federal District Court enjoined the city of Memphis from laying off fire fighters in order to reverse seniority, and ordered the city to enter into an amended consent decree to that effect. The judge observed that possibly the memorandum of understanding signed by the city and the fire fighters was "not entitled to all the sanctity of a contract," and that the seniority system it called for was not bona fide, because of its discriminatory effects. he city has appealed the decision.

5. *Pedro Castro v. Nancy Beeker, Nos. 70-1220 C, 74-2982-C (D. Mass. August 7, 1981) and Boston Chapter, NAACP v. City of Boston, Nos. 72-3060-C, 73-269-C (D. Mass. August 7, 1981.)*

The District Court of Massachusetts ruled that Boston had to maintain certain percentages of minority employees in the police and fire departments when laying off employees. The federally-imposed consent decree, ruled the judge, takes precedence over state statute calling for layoffs in order to reverse seniority.

Factors that may influence the court in similar cases may be:

1. the wording of the consent decree;

2. a jurisdiction's record in complying with a consent decree;

3. the language and nature of the collective bargaining agreement.

CHAPTER 8

SUBCONTRACTING

Subcontracting in the public sector most commonly refers to a situation wherein the public employer engages a third party outside the bargaining unit to perform in whole or in part services which the bargaining unit would otherwise perform. The right of management to contract out work is a point of increasing concern for both employers and employees in the public sector. A trend among both judges and arbitrators has been to find that not only the impact of a decision to subcontract, but also the decision itself, may be a required topic of bargaining.[1]

This issue has had a somewhat slower development in law enforcement labor relations. One possible reason for this is the long standing belief that subcontracting is not feasible in the law enforcement area because of the unique nature of the duties, activities and responsibilities of police officers. There is, however, a growing realization among public employers that sworn personnel may be unnecessary in those facets of law enforcement administration that are predominantly administrative, clerical or supportive. Reducing a department's use of sworn personnel in these areas would make available a large number of sworn employees for law enforcement and for the protection of lives and property. In addition to a more efficient allocation of sworn personnel, the use of nonsworn personnel in these areas may also reduce the cost of maintaining city functions and achieving department goals.

Along with "civilianization" there are several police departments that are expanding the use of auxiliary forces to supplement basic services. A strong point can be made that decisions to use auxiliaries spread as the cities' fiscal problems mount. Two recent scope of bargaining decisions by the New York City Board of Collective Bargaining addressed civilianization and use of auxiliary police. In both cases the city's right to manage by determining the methods and means to deliver police service was upheld. However, in neither case were police layoffs involved. (NYC OCB Decisions No. B-5-80 and B-26-8).

Many of the agreements (37 percent) either did not mention management's reservation of the right to subcontract or could not reasonably be interpreted as explicitly recognizing management's exclusive right to subcontract. Most were silent on this issue, but a few contained a short statement to the effect that management retained "all customary rights, functions and prerogatives." About 7 percent of all the contracts studied contained language to this effect. Some examples of this type of clause include Long Beach, Ca. ("constitutional, statutory, charter or inherent rights, powers, authorities and functions shall remain exclusively vested in the City. . ."); Los Angeles County, Ca. (county retains "inherent managerial rights, powers and functions. . ."); and St. Paul, Mn. ("a public employer is not required to meet and negotiate on matters of inherent managerial policy.").

When the contract is silent or contains a clause referring only to inherent or customary rights, management may have problems in arguing that it has an unfettered right to subcontract.

"Subcontracting often involves introduction of modern equipment and simultaneously reassignment duties to nonsworn personnel."

Arbitrators in both the public and private sector generally recognize that employers possess the authority to manage and direct their business affairs, and that such management and direction may include subcontracting. The general feeling of arbitrators may be that, in the absence of any language in the collective bargaining agreement regarding subcontracting, management has a right to subcontract so long as this action is done in good faith, represents a reasonable business decision, and does not seriously weaken the bargaining unit or subvert the bargaining agreement.[2]

Thus, a determination of the propriety of subcontracting where the agreement is silent frequently involves a weighing process by the arbitrator. The "good faith or reasonableness" (Bd. of Education of Philadelphia, 56 LA 336 (Arbitrator Seitz) 1971) of the employer in relation to the bargaining unit employees often becomes the most significant factor in resolving a subcontracting dispute. Other factors may also be important, however, including the following:

(1) *Past Practice.* Whether the employer has subcontracted unilaterally in the past or whether there is a definite, distinct past practice of consultation with the union or a mutual accord before subcontracting. (*City of Bridgeport,* CCH Public Employee Bargaining No. 40,954.)

(2) *Impact on Bargaining Unit.* Whether subcontracting substantially prejudices the integrity of the bargaining unit. (*Bd. of Ed. of Philadelphia, supra* note 7.)

(3) *Effect on Unit Employees.* Whether the effect on the unit employee is substantial. (*City of Milwaukee,* 59 LA 537 (Arbitrator Mueller, 1972.)

(4) *Justifiction.* Whether the economic or operational reasons given are sufficient to justify subcontracting (*Transit Authority of River City, supra* note 5.) or are only raised to avoid or evade bargaining responsibilities.

(5) *Availability of Appropriate Equipment or Qualified Employees.* Whether unit employees are qualified or there is appropriate equipment available to do the subcontracted work. (*City of Jamestown,* 72-2 CCH Arbitration No. 8392 (1973.)

(6) *Agreement Security Provisions.* Whether job security provisions such as wages, hours, recognition or seniority clauses restrict a right to subcontact.

(7) *Negotiation History.* Whether there has arisen a mutual understanding from contract negotiations giving rise to implied limitations on the right to subcontract.

Whether language which reserves "all customary rights, functions and prerogatives" is alone sufficient to imply an unrestricted right of management to subcontract is unclear. The existence of an unfettered right to subcontract based on this language is in large part subject to an arbitrator's adoption of decisional or statutory law defining contracting as a subject of bargaining. There have been too few reported cases involving police or sheriff's departments to state conclusively the standards that arbitrators generally rely on in resolving subcontracting disputes in the law enforcement area. Cases in other areas of the public sector, however, may provide some insight.

Arbitrators in some cases have adopted standards generally applied to subcontracting disputes in the private sector. (See, for example, *PLRB v. Burough of Wilkinsburg*, PERA Case No. C-207-W reported in GERR at 476:B-9 (Penn. 1972)). These public sector decisions, however, generally recognize limitations on management's prerogatives which exist by virtue of constitutional law, statutory provisions or municipal charters. Others have refused to apply private sector standards to public sector subcontracting disputes and have developed different standards. The standard adopted in Wisconsin, for example, is whether, on the facts of each case, the particular decision is primarily related to wages, hours and conditions of employment; or whether it is primarily related to the formulation or management of public policy. (*Unified School District No. 1 of Racine County v. WERC*, 81 Wis. 2d 89, 96, 97 LRRM 2489, 2491 (Wis. Sup. Ct. 1977)).

If either statutory or case law requires or permits bargaining or subcontracting, an arbitrator may find the right to subcontract has not been retained by management despite language reserving customary rights, without clear and specific contract language reserving the right to subcontract. Such language may also permit broad reliance by an arbitrator on other considerations to determine the appropriateness of the exercise of a subcontracting right in many instances.[3]

Almost a third (30 percent) of the bargaining agreements contained language which conferred on management the right to subcontract by implication at least. The language in these agreements took various forms. One, for example, stated that management retained the right:

> To establish standards and methods; to hire civilians except for patrol and investigative duties; to transfer work or to otherwise perform work as required by the demands to maintain the efficiency of public operations. (Fort Wayne, Indiana.)

Another contained several clauses which, if read together, might imply a right to subcontract. This agreement contained the following language in its management rights section:

Clause I of that agreement stated that the city retained:

> All express and inherent rights and authority pursuant to law with respect to determining the level and *manner in which the City's law enforcement activities are to be conducted.* (emphasis added)

Clause IX of that agreement stated that:

> (t)he City has statutory and charter rights and obligations in contracting for matters pertaining to municipal operations.

Finally, Clause X reserved to the City:

> (a)ny and all rights concerning the management, organization, and duration of the Police Department and police force .... (Language from the Phoenix, Arizona bargaining agreement.)

Most of the agreements in this category, however, contained language to the effect that management retained the right "to determine the methods, means and personnel by which departmental operations are to be conducted. (Jefferson County, Kentucky.) It is not completely clear whether this language is alone sufficient to recognize a public employer's right to subcontract. Arbitrators may accept this language as contractual recognition of a public employer's right to subcontract. The determination of methods, means, personnel, and policies involving department operations at least arguably implies a right to subcontract. In addition, such language may be regarded as a waiver of the union's right to engage in bargaining over subcontracting where such bargaining is required by law.

Subcontracting often involves introduction of modern equipment and simultaneously reassignment of duties to nonsworn personnel. Some of the agreements that contained the "methods, means, personnel, and policies" language also stated the understanding that the control, regulation, and use of all equipment were exclusive functions of the city. (*City of Jamestown*, CCH 72-2 Arb. No. 8392.) Such language may not be absolutely necessary to obtain an arbitrator's approval of the right to subcontract in such situations, but the use of equipment language is strongly recommended. It demonstrates the parties' understanding of managements right to make operational changes, including those involving modernization of equipment, which have an impact on the bargaining unit.

An example of arbitral recognition of the impact of the "methods, means, personnel, and operations" language and the impact of language dealing with use of equipment appears in a decision and award issued by arbitrator Frederick Freilicher in 1973 for the City of Jamestown (CCH 72-2 Arb. N. 8392). In that case, the city decided to implement a new communications system and to staff the system with civilian employees. The collective bargaining agreement contained the following language;

> ...the determination of methods and means of operation, and the control and regulation and use of all equipment are exclusive functions of the City, provided, however, that in the exercise of such functions the City shall observe the provisions of this Agreement. ...

The agreement also provided that in the event the department moved into new facilities and there was a resultant change in work duties or classifications, the union had the right to negotiate such changes. The union representatives demanded negotiations over the decision to use civilian employees, but the employer insisted that the decision was not bargainable, was not in violation of the agreement, and civilian dispatchers were not in the police bargaining unit. The arbitrator found that there was no duty to bargain the decision to subcontract, stating:

> The implementation of the 911 system using new communications equipment, and the civilian manning of that equipment, fall within the above-quoted language of the 'Management Responsibilities' clause, since the communications console is 'equipment' and since the utilization of civilians to operate the equipment falls within the language which gives the City the exclusive right to determine the "methods and means of operation' of the equipment.
>
> Furthermore, there is nothing...which limits the exclusive right of the City to decide to use the communications console or to hire civilian dispatchers to operate it. This is so because the (Union)

has disclaimed any interest in representing the dispatchers. . .the language referring to 'added changes in work duties or classifications' applied only to work duties and classifications involving unit employees.

. . .Finally, it should be noted that the hiring of civilian dispatchers for the communications console has not resulted in any layoffs in the Police Department. In these circumstances, I find that the City had no obligation to negotiate concerning its decision to institute a 911 system using a new communications console or to staff the communications center with civilian dispatchers.

Around 27 percent of the police contracts explicitly reserved the right to subcontract in the reserved rights provisions of the bargaining agreement. The language of this explicit reservation took several forms. One agreement, for example, reserved the right to purchase services of others by contract or otherwise. (Elizabeth, New Jersey, and PBA Local No. 4)

Another reserved the right:

> to study and use improved methods and equipment and outside assistance either in or out of the Employer's facilities. . . . (Genessee County and FOP No. 145).

Finally, others specifically mentioned the word "subcontract" in the management rights clause. For example, the bargaining agreement in Hollywood, Florida contained the following language: "(T)he City. . .reserves the exclusive right to: merge, consolidate, *subcontract*, expand, or close the Department or any part thereof or expand, reduce, alter, combine, assign or cease any job. . . ." Another example is the bargaining agreement between Allentown, Pa., and its lieutenants and captains, which contains the following language: "The full right to *subcontract* or discontinue any CITY operation or work if in the judgment of the CITY such action is deemed in the public interest."

The obvious advantage of explicitly reserving the right to subcontract, as in the examples above, or to use the word "subcontracting" in the phrase, is to eliminate opportunities for the union to argue successfully that contracting or transferring work is limited by virtue of past practice or understandings or interpretations of contract language arising from contract negotiations or that prior bargaining is required. By explicitly reserving subcontracting rights in the collective bargaining agreement an employer may have less exposure to an arbitrators concerns about the impact of subcontracting on the bargaining unit. However, the explicit reservation of subcontracting rights may not be sufficient if the arbitrator were to find the impact so extensive that management's subcontracting completely eliminated or significantly impaired the bargaining status of the union or showed an attempt on the part of management to evade bargaining with the union or continued recognition of the union.

NOTES

1. "Subcontracting and Public Sector Bargaining," p. 126, *1979 Labor Relations Yearbook* (1979) BNA); this trend is, however, by no means universal. A recent New Jersey case, for example, held that neither the decision to subcontract nor the impact of the decision were a required topic of bargaining. *Local 195, IFPTE v. New Jersey*, 197 N.J. Super. 85 (1980).

2. Elkouri and Elkouri, *How Arbitration Works*, p. 503, (1973, BNA).

3. An example of the influence of statutory law on public sector bargaining may be seen in *Van Buren School District v. Wayne County Circuit Court*, 61 Mich. App. 6, 232 N.W. 2nd 278, 90 LRRM 2615 (1965). Here a court found that the school district violated the "terms and conditions of employment" section of the Michigan PERA by refusing to bargaining over a decision to subcontract school busing.

CHAPTER 9

RULES AND REGULATIONS

About 79 percent of the bargaining agreements contained provisions on the formulation of departmental rules and regulations. Generally, these provisions addressed the issues of the establishment, review and enforcement of rules and regulations including, more specifically:

- Unilateral or shared decision-making in creating new rules or modifying existing rules;
- Employee obedience to rules and regulations;
- Imposition of discipline for violation of rules and regulations; and
- Review of department rules and regulations through grievance and arbitration procedures.

CREATION OR MODIFICATION OF DEPARTMENT RULES AND REGULATIONS

The language that describes the rights of the contracting parties in formulating or modifying department rules and regulations varies substantially from agreement to agreement. This variation reflects the lack of uniformity among state labor laws that determine the subjects over which employers and unions must bargain. A comprehensive bargaining statute that mandates bargaining or consultation over rules and regulations should not, however, discourage employers from attempting to obtain recognition within the agreement of a more extensive management right to formulate department rules. Employees and their bargaining representatives can waive statutory rights to bargain over rules and regulations by agreeing to language that constitutes an express waiver allowing the employer to create, modify or amend rules and regulations.

Exclusive or Sole Right

The most desirable provisions from a management viewpoint are those which give the employer the exclusive right to create new rules or modify existing ones. Thirty-six percent of the agreements contained provisions, generally appearing in management rights clauses, that give management exclusive or sole right to formulate department rules and regulations. The following is a model of such a clause:

> The employee organization and its members recognize that the city has the exclusive right to manage and direct the Police Department. Accordingly, the city specifically reserves the exclusive right to formulate departmental policy, rules and regulations.

Where management possesses the exclusive right to formulate rules and regulations, the department can implement new policies promptly, avoiding the time consuming process of negotiation. In addition, the employer can maintain greater control over operation and personnel and need not compromise policy objectives to reach agreement with the union on a proposed rule.

The most common limitation on this right was the provision that it would not be exercised in a manner inconsistent with the bargaining agreement. The following is characteristic of such language:

> The Association recognizes the exclusive right of the Chief of Police to establish and maintain department rules and procedures for the administration of the Police Department during the term of the Agreement, provided that such rules and procedures do not violate any of the provisions of this Agreement. (Milwaukee, Wisconsin, and the Milwaukee Police Association.)

A slightly broader version of this language was found in the following clause:

> The employer reserves the right to develop and implement such directives, rules and regulations as may be deemed necessary to the employer for the conduct and management of the affairs of the department and the association (APOA) agrees that the employees shall be bound by and obey such directives, rules and regulations insofar as the same do not conflict with this Agreement, the laws of the United States, the laws of the State of New Mexico and/or the laws of the City of Albuquerque. (Albuquerque, New Mexico, and the Albuquerque Police Officers Association.)

Another limitation in agreement which contained language giving management the exclusive or sole right to formulate rules and regulations arose from the presence in other parts of the bargaining agreement of clauses which limited that right. Very often this problem arises when there is language to the effect that existing rules, regulations, or ordinances or statutes now in effect should remain so during the term of the agreement. The result of such provisions may be to severely limit what would otherwise be the employer's exclusive right to modify an existing rule.

NOTIFYING UNION OF CHANGES

Over one-quarter (27 percent) of the agreements contained provisions which required that the employer notify the union of the implementation of new rules or changes in current ones. Some of the agreements merely required the union be notified of any change. Others, however, required the employer to notify the union *before* implementing new or changed rules. If the parties' bargaining history does not include union participation, such notice alone does not mandate an employer's negotiation or "exchange of views" with the union. In the absence of any provision or understanding that advance notice includes giving the union the opportunity to consult or negotiate over changes, notice requirements do not have a significant impact on management's authority to promulgate rules and regulations. It should be noted, however, that almost one-quarter (24 percent) of the agreements which contained notice requirements required advance *notice and consultation* with the union. Prior notice, whether in the agreement or not, obviously affects management's formulation of rules, since lack of prior notice may be raised as a defense in arbitration hearings in which employees are contesting the imposition of rule-related discipline.

Less than 10 percent of the agreements contained language specifically requiring that all rules and regulations be written. Such a requirement can present operational problems. For example, if written department rules and regulations also include directives or department orders,

then individual instances may arise when an employee, orally directed to perform a certain duty or act, asserts that such a direction must be in written form. This problem can be avoided if management insures that department rules and regulation do not stray into the area of orders or directives. In other words, directives from management and superior officers should not be made a part of established rules and regulations.

Written regulations can be a boon to management: Published rules are more easily understandable for employees, and they reduce the possibility that an arbitrator would invalidate a disciplinary action for lack of written regulations.

Several agreements provided that all new or modified rules had to be posted. Although posting imposes an additional restriction and enforcement, it is not without advantage to the employer, inasmuch as it could eliminate or reduce defenses based on an assertion that a disciplined employee was not aware of the rule or regulation. However, only written rules should be covered by such contract language.

CONSULTATION WITH THE UNION

About 20 percent (16 percent of all the agreements studied) of the agreements which contained clauses dealing with the creation and modification of rules and regulations required that the employer consult or confer with the union before making new rules or modifying existing ones. One example of this consultation requirement is the following:

> The Employer agrees to consult with F.O.P. 89 before making changes in general orders as defined by General Order 69-1 or benefits affecting employees. (Prince Georges' County, Maryland, and FOP Lodge No. 89.)

Another example would be the following:

> When requested, the Chief of Police and/or Safety Director shall meet once a month with no more than five (5) representatives of the F.O.P. to discuss matters of mutual concern. The agenda of each meeting is to be submitted five (5) days prior to said meeting. All departmental notices and directives shall be subject to review by this joint committee. (Erie, Pennsylvania, and Haas Memorial Lodge No.7.)

Some of these clauses specified the number of days' notice the union was to receive. Other agreements limited the consultation requirement to certain subjects, such as discipline, or to matters falling within the definition of "wages, hours and conditions of employment" or "working conditions."

Consultation essentially means giving the union the *opportunity* to contribute opinions and suggestions and, on request, meeting with union representatives to receive those opinions and suggestions. The requirements embodied in consultation requirements, therefore, denote something less than negotiation. Nevertheless, the consultation process may delay the formulation and implementation of rules and regulations. The bargaining agreement should, therefore, specify that an exception to the general rule of "implementation following consultation" occurs in emergency situations, when temporary implementation does not breach the agreement. In addition, management should agree only to consultations that state labor laws require. For example, if the duty to consult or meet and confer extends only to working conditions, management need not agree to a broader scope of consultation.

NEGOTIATION WITH UNION

Negotiation provides a union with the broadest level of involvement with the formulation of departmental rules and regulations. As a result, the negotiation process can have a significant impact on management's right to formulate and implement new or modified work rules and procedures. Approximately 4 percent of all the agreements studied contained language which required the employer to negotiate prior to modifying new rules or changes in existing ones. An example of such a negotiation provision is the following:

> During the term of this Agreement prior to the establishment of new rules or regulations or changes in existing rules or regulations, the Association shall be afforded the opportunity to negotiate with the Chief of Police in accordance with the procedures agreed upon between the Association and the Chief of Police and set forth in departmental rules, provided such new rules and regulations or changes in existing rules and regulations do not fall within the Chief of Police's unfettered management functions. (Milwaukee, Wisconsin.)

If state statutes mandate bargaining over rules and regulations related to wages, hours and conditions of employment, management should try during contract negotiations to obtain the union's express written waiver of its right to such bargaining. If management is unable to obtain a total or partial waiver of the union right, it should at least ensure that its obligation to negotiate does not exceed that mandated by state labor laws.

In addition, employers should remember that negotiation is *not* synonymous with *mutual accord*. Negotiation is generally defined as "bargaining in good faith with the objective of reaching agreement." Sometimes parties bargaining in good faith may be unable to reach agreement and a true impasse may occur. In such cases, management should be permitted to implement its last offer unilaterally unless other dispute-resolution procedures are required by law. A clause embodying this important concept is the following:

> All Rules, Regulations and General Orders of the department pertaining to terms and conditions of employment shall be changed through the process of collective negotiations. In the event the City desires to change such a rule, regulation or general order, it shall give notice thereof to the Club. The parties shall thereafter negotiate collectively over such proposed change(s). If, as a result of collective negotiations, the parties arrive at impasse, the Chief of Police may make such change(s) in the rules, regulations and general orders of the department. This procedure shall not be used to amend, delete, modify or change any provision expressly set forth in the Master Agreement between the parties. (Rochester, New York, and AFSCME and the Locust Club.)

Management representatives who agree not to implement new or modified rules unless the union agrees are, in fact, generally accepting a negotiation requirement greater than that demanded by law.

Finally, if management must accept language which requires negotiation prior to the implementation of new rules or changes in existing rules, it should specifically exempt from such requirements the right of management to promulgate rules and regulations in case of emergency. The following clause embodies this concept:

> Except in cases of emergency, reasonable advance written notice shall be given to the Association if affected by any ordinance, resolution, rule or regulation directly relating to matters within

the scope of representation proposed to be adopted by the City and shall be given the opportunity to negotiate if requested with the designated management representatives prior to adoption. In cases of emergency when the foregoing procedure is not practical or in the best public interest, the city may adopt or put into effect immediately such measures as are required. At the earliest practicable date thereafter, the Association shall be provided with the notice described above and shall be given an opportunity if requested to negotiate changes to said notice with the management representatives designated by the City Manager. (Stockton, California, and the Stockton Police Officers Association.)

EMPLOYEE OBSERVANCE OF RULES AND REGULATIONS

Many of the agreements studied required both the union and the employer to enforce certain types of rules and regulations; or at least not to hinder each other in doing so. They also require that employees obey all rules and regulations. Mutual enforcement clauses generally were limited to rules and regulations covering safety and health.

Many agreements contain specific language requiring employee observance of and obedience to all departmental rules and regulations. A statement of the employer's right to demand compliance or the employee's duty to obey all rules is not necessary for an arbitrator to sustain disciplinary action for violation of a reasonable work rule. However, such a statement, particularly when it discusses the appropriate time and manner for objecting to a rule, can minimize employee misunderstandings. Finally, some agreements provided that employees were required to obey all rules except insofar as the rules or regulations were inconsistent with the terms of the collective bargaining agreement. Such language should be avoided. Although an arbitrator may not rule an employer could not discipline an employee for violating a reasonable rule subsequently found to be inconsistent with the terms of the bargaining agreement, use of such language can lead to misunderstandings among employees that, if they believe a rule to be inconsistent with the collective bargaining agreement, they need not obey it. A rule which explicitly requires employees to obey all rules and regulations, and thereafter to contest their inconsistency with the collective bargaining agreement, better promotes order and stability in the promulgation of rules and regulations.

AVAILABILITY OF REVIEW THROUGH GRIEVANCE AND ARBITRATION PROCEDURES

In many of the agreements, the grievance and arbitration articles included disputes over rules and conflicts between rules and regulations and other terms of the collective bargaining agreement. Almost one-third of the agreements, however, included language dealing with the right of employees to grieve rules and regulations.

Several agreements provided that an employee or union could file a grievance claiming "discriminatory application" or "unjust enforcement" of a rule or regulation. "Discriminatory application" generally means applying a valid rule or regulation in a manner that differentiates between employees on the basis of unlawful, arbitrary or other improper standards. An example of a grievance involving discriminatory application involved a female police officer who was disciplined for reporting to work wearing a seasonal uniform. The rules and regulations of the police department involved concerning uniforms read as follows:

> Officers—Female: From October 1 to April 1: Must wear slacks. Blue long sleeve shirts and long tie, also parka. From May 1 to October 1, must wear skirt and white shirt, small tie, jacket when cool. Uniform must be worn in its entirety. Officers—Male: Blue pants and shirts, long tie, hat; parka when cold. Jacket when cool. Must wear uniform in its entirety.

The arbitrator noted that while males were permitted to vary winter garb with lighter weight garments on a personal judgment basis in response to thermometer readings, female officers were treated differently by being subjected to the timetable of a rigid schedule for winter wear versus lightweight clothing, without any consideration of weather conditions. The arbitrator found the rule and the enforcement of the rule to be an imposition of an unfair standard based on sex. Because of this, the arbitrator found the rule to be faulty and unenforceable. The arbitrator directed the city to promulgate uniform rules that would "allow both sexes discretion as to whether winter or summer wear garments will be donned or which establishes a schedule, by calendar, which all must abide by." The arbitrator further directed the city to rescind the application of a calendar schedule to the lone female on the police force.[1]

"Unjust enforcement" includes discriminatory application as well as other practices, such as selective enforcement, that produce unfair results. Generally speaking, issues of discriminatory application and unjust enforcement may be subject to grievance and arbitration procedures particularly when they are covered by other contractual provisions.

Some contracts provided for grievances over rules and regulations that "conflict with the collective bargaining agreement." The following language is typical:

> Any charge by a bargaining unit member that a work rule . . . is in violation of this agreement . . . shall be a proper subject for a grievance.

One agreement provided that in any such case of a conflict, the rule or regulation would have no force or effect. Use of such language can present an operational headache to a police department, because merely stating that a rule or regulation in conflict with terms of a collective bargaining agreement shall have no force or effect can lead a police officer or a representative to the belief that an assertion of a conflict renders the rule or regulation invalid.

Most of the contracts in this category provided for the grieving of "unreasonableness" of a rule or regulation. Typical of this language is the following:

> Any unresolved complaints as to the reasonableness of a new or existing work rule . . . shall be resolved through the grievance procedure.

In situations where the unreasonableness of a particular rule or regulation is subject to the grievance and arbitration procedures, the collective bargaining agreement also should contain language similar to the following:

> The Association shall have the opportunity to grieve the continuation of any rule or regulation for a period of thirty (30) calendar days after the execution date of this agreement or the promulgation of any new rule or regulation thirty (30) calendar days after the promulgation and furnishing the same to the Association as to the reasonableness or propriety of said rule or regulation.

The distinct advantage of inserting language requiring a short filing period is

that department representatives will not be subject to unlimited contest of rules and regulations during the term of a collective bargaining agreement; rather, the employees and labor representatives are required to make their case at specified periods. Generally, in cases involving disciplinary action on a specific rule, the grievant cannot raise the issue of reasonableness unless the grievance is filed within the specified 30-day period.

Relatively few agreements eliminated arbitration for resolving issues over rules and regulations. A public employer successful in obtaining such language in the collective bargaining agreement is in the advantageous position of being able to make the final determination on any issue involving alleged discriminatory application, unjust enforcement, unreasonableness, or conflict with the terms of the bargaining agreement. Therefore, employers should seriously consider attempts to negotiate language that excludes from the definition of a grievance disputes involving rules and regulations. Alternatively, the employer, while agreeing to the availability of grievance procedures for certain issues involving rules and regulations, should consider not agreeing to language which includes the arbitral stage.

Another limitation that appeared in collective bargaining agreements seriously hindered management's right to implement rules and regulations. This limitation made implementation a condition of an arbitrator's approval:

> If a work rule or working condition is changed and employees are aggrieved the employer will not implement these changes until the arbitrator's decision has been reached, except in cases of emergencies as defined by the Chief of Police. If such is the case, that is, a work rule is intended to respond to an emergency situation as defined by the Chief, the Union will be advised before implementation.

This language clearly prevents management from implementing changed rules and regulations in situations where an employee alleges that he or she is aggrieved by the new or modified rules. Even assuming that a state administrative agency would find such language to be a required subject of bargaining in certain circumstances, the language does not restrict the application of the quoted clause to rules and regulations primarily related to terms or conditions of employment. Furthermore, this clause in effect precludes legitimate employer action in the area of rules and regulations, pending a final result in the grievance and arbitration process. Such language should be avoided.

NOTES

1. This case was reported at 72-2 CCH Arb. 8655.

CHAPTER 10

SENIORITY

Seniority is commonly understood to be the length of service with the employer or in some division of the enterprise unless otherwise defined by the collective bargaining agreement. Seniority, as we have used the term in this study, means the employee's length of service with the particular law enforcement department. The overwhelming majority of agreements, in defining "employer" for seniority purposes, limit the service considered to that with the police or sheriff's departments—as opposed to other departments of the municipal government. Some agreements, on the other hand, did include service with other entities in the municipal government in seniority computations. Invariably, however, the contracts and memoranda in this category impose greater limits or restrictions on the application of seniority.

Typically, the agreements that define service considered for seniority computations include only continuous service. If the employee has a "break in service," only service following that break may be relevant. A few of the agreements and memoranda containing seniority provisions expressly set forth those events that constitute a break in service. They specify such matters as resignation, retirement, discharge, unexcused absence for a specified number of days, failure to return to work following expiration of an approved leave of absence without prior authorization. Continued layoff exceeding the period during which the laid-off employee has recall rights, as well as failure to accept an offer of recall, occasionally constitute breaks in service.

NEGOTIATING SENIORITY CLAUSES

Approximately 61 percent of the agreements contain express provisions covering seniority. There is, however, a great divergence among the agreements in their application of seniority. One agreement, for example, simply provides seniority is to govern personal leave requests, presumably where two or more employees request such leave and both requests cannot be administratively accommodated at the same time. Other agreements require seniority application to various additional subjects, including vacation preferences, shift preferences, transfers and staff reduction.

Finally, a few agreements contained only provisions dealing with the termination of seniority. Twenty-six percent of the agreements studied contain a provision dealing with how seniority was terminated. The vast majority of these were coupled with other provisions dealing with seniority.

Whatever seniority benefits employees possess generally exist as "rights" only to the extent that they are made so by an agreement between the union and the employer. Once part of the bargaining agreement, however, the requirement of seniority recognition can be one of the most onerous limitations on managerial discretion. In fact, the impact of seniority recognition provisions can be significant on not only the employer, but the union and employee as well, "since every seniority provision reduces, to a greater or lesser degree, the employer's control over the work force and compels the union to participate to a corresponding degree in the administration of the system of employment preferences which pits the interests of each worker against those of all the others."[1]

If possible, therefore, employers should avoid including seniority provisions in collective bargaining agreements. Seniority considerations, particularly when used to determine transfers, promotions, shift assignments, and the like, limit the employer's authority to consider the qualifications of an employee or the operational needs of the department. Thirty-nine percent of the agreements and memoranda in this study made no reference to seniority in employment decisions at all; whether relating to filling vacancies, shift assignments, staff reductions, selecting vacations, or assigning overtime. Some of these agreements and memoranda include a definition of seniority but are silent as to the application of seniority; that is, seniority is not identified as a criterion for consideration in personnel decision-making. Accordingly, we have included these in the percentage computation of contracts that do not specify the application of seniority to any such decisions.

Seniority is typically a mandatory subject of bargaining; that is, an employer is required by law to bargain in good faith over a union's seniority proposals. However, even though an employer may be required to negotiate over seniority proposals, the employer does not have to agree to the union's seniority proposal. Furthermore, civil service provisions may require seniority be followed in certain situations, taking precedence over collective bargaining agreements.

If employers cannot avoid application of seniority altogether, they should consider limiting its application to areas of secondary concern, such as overtime assignments, personal leave requests, or vacation preferences. More important decisions, such as transfer, staff reduction, or shift assignments, should not be tied to seniority if management's interests are to be best protected. It is in such primary areas where the considerations of "ability and skill" of the employee as well as the needs of the department should be the determining factors. Consider, for example, the important area of shift assignments. If shift assignments are made on the basis of strict seniority, management could find itself in a situation where substantially all of the newer employees would be on the night shift and the senior employees would be on the traditionally preferred day or afternoon shift. The application of strict seniority could prevent management from maintaining a reasonable balance, in terms of experience, throughout all shifts during each working day.

In addition, if an employer must agree to a seniority provision which applies seniority in certain types of decisions, length of service should not be the determinant. An example of language which should be avoided would be a clause concerning layoffs which provides: "Employees shall be laid off in the inverse order of their seniority . . . ." Such language requires selection of employees for layoff based solely on length of service, and does not allow consideration of the relative ability of the employees in the affected group.

Employers should secure language that establishes unequivocally that seniority is not the only criterion for employer decisions to which seniority is applied. Some of the agreements provided simply that

"due regard" should be given to seniority when the employer made a decision in the area or areas to which the seniority clause applied. A better approach, however, is to specify that seniority is to be a secondary consideration. One agreement, for example, provided:

> Seniority shall have no bearing on promotion decision except in the event of a dead tie between eligible officers after all other factors have been taken into consideration. (Oklahoma City, Oklahoma, and FOP Lodge No. 123.)

Another agreement provided:

> The following criteria shall be considered by the department in determining a change of shifts:
>
> (a) needs of the Department;
>
> (b) a balancing of experience levels on each shift, and
>
> (c) where all other factors are equal, the most senior employee shall be given preference. (Southfield, Michigan, and the Police Officers Ass'n. of Michigan.)

Finally, one agreement provided:

> The parties to this agreement recognize that the principal factors in job assignments are the efficiency and integrity of the Police Department. The employer will, however, in making non-promotional assignments within the uniformed squads, give due consideration to an employee's seniority, physical condition, personal hardship and particular abilities when making such assignments and shall assign the senior man among those qualified. (Springfield, Mass., and IBPO Local 364.)

TRANSFERS AND VACANCIES

Limiting the application of seniority to a secondary status is important to all areas of employment decisions. The department must retain authority to make transfer decisions on the basis of the qualifications of the job applicants and the needs of the department. One way to accomplish this is to use language that provides that the employer would transfer only employees who meet the minimum qualifications for the position. However, this is not the best method, because it does not ensure the department will be able to transfer the employee best able to fill department needs. This type of clause does not enable the employer to choose the best person for the job; but rather, the decision is whether the employee with greater seniority can in fact do the job. Thus it is possible, under a minimum qualifications provision, that the senior qualified employee will be entitled to preference even though a junior employee may possess greater skill and ability.

Whenever possible, the employer should secure language that allows it to consider "above-minimum" performance levels of employees. In other words, contract language should enable the employer to select the better or best of two or more employees who meet the minimum qualifications specified. This is traditionally accomplished through language providing that: "Seniority will govern where the employer determines that the applicants are equal in demonstrated ability, competency, and skills."

Using "ability," as opposed to "equal ability," would not achieve the desired result. "Ability" alone would necessarily limit "ability and competency considertions" to a simple determination of whether the employee or applicant had the minimum skills required. "Equal ability" (or, if the union will not accept that term, "relatively equal in ability") will help the employer retain authority to make decisions based on the relative performance and experience of the applicants. In such a situation, seniority would be relevant only if the employees were rated "equal" (or, if applicable, "relatively equal").

A model clause might be the following:

> Transfers shall be solely the responsibility of the police chief or his designated representative, except that nothing in this section shall prohibit an officer from requesting, in writing, a transfer to a new or vacant position for which he is qualified. When transferring an officer covered by this agreement, the police chief or his designated representative shall base his decision on the following criteria:
>
> (1) The needs of the department.
>
> (2) Qualifications.
>
> (3) Experience.
>
> (4) Performance.
>
> (5) Special training or skills.
>
> (6) Request for transfer.
>
> If, in the judgment of the police chief or his designated representative, two or more officers are equal according to the above criteria, preference shall be given to the officer who has the greatest amount of seniority.

In the above language, it is clear that seniority considerations do not apply until the employer determines that the applicants for the position have equal qualifications.

SCHEDULING VACATIONS

If the application of seniority provisions to vacation scheduling cannot be avoided, employers should negotiate language that makes vacations contingent on the operational needs of the department. An example of this would be the following:

SENIORITY

	Number	Percent
Contracts specifying Seniority as the exclusive determinant in primary areas of employment (transfers, assignments, promotions, layoffs and recall, etc.)	54	39
Contracts specifying seniority as only one factor in primary areas	51	36
Contracts specifying seniority as the exclusive determinant in secondary areas of employment (leave, assignment of overtime, etc.)	51	36
Contracts specifying seniority as only one factor in secondary areas	34	24
Contracts not referring to seniority	36	26

All vacations are to be taken as directed by the head of each department at such time as it would be most advantageous to the efficient operations of that department. However, in the assignment of vacation periods:

(a) The officers and employees with the most seniority shall be given first consideration for requested vacation periods. (Salt Lake City, Utah, and IBOP Local 470.)

UNIT OF SENIORITY RECOGNITION

Agreements defining seniority generally also specified the "unit" of seniority that will be used. The seniority unit may be by department, job classification, shifts, divisions or combinations of the above. A clause may provide, for example, that seniority for transfer purposes is to be recognized by "classification within each bureau." An unusual clause from the previous study directed that seniority be applied "first by rank, second by continuous service in rank; third by continuous service with the department; and last by employee number . . . ."

An example may show the benefits of using specified units of seniority recognition. Assume that the collective bargaining agreement simply defines seniority as continuous service from last date of hire. Assume further that the staff-reduction features of the collective bargaining agreement mandate the application of seniority but do not specify on what organizational or administrative basis "seniority" is to be applied. An arbitrator could conclude that such language mandates selection of the least senior employees in the department for layoffs, regardless of position. If the employer wanted to reduce the number of employees in the communications division, an arbitrator could, under such contract language, require selection of the least senior employees, without regard to their positions. If the least senior employees held positions in another division, those employees would nevertheless be laid off. Thereafter, the employer would reassign employees in the communications division (the division to be reduced) to the positions vacated by the employees selected for layoff.

Employers should try to secure a contractual specification of seniority consistent with department organizational and operational lines. This will benefit the employer not only in staff reductions but in all situations where seniority is applied, such as vacation scheduling and shift preferences. For example when seniority is applied department-wide to requests for vacations, and senior employees are concentrated in one particular shift, or in one division, vacation scheduling on a "department-wide" basis might result in understaffing of that shift or division. One way to deal with the problem is to provide seniority can be the criterion only to the extent that department needs are met.

This approach is less than comprehensive, and it is not a proper substitute for limiting application of seniority by using a narrower unit basis. For example, on the issue of vacation scheduling, seniority could be the determining consideration if it were limited to classifications within a given bureau and shift. With such a limitation, the employer could recognize seniority to some extent in scheduling vacations, while at the same time giving due consideration to the needs of the department.

No single unit of seniority recognition is uniformly applicable to all police departments. Significant variations in the extent and complexity of the organization and operations of the particular department in question, the impact of civil service rules, identification of divisions, bureaus, and shifts where more senior employees are disproportionately positioned, the ability of employees in particular positions to perform the duties required in other positions, and so forth, preclude the existence of any uniformly acceptable unit.

Similarly no one unit of seniority recognition is necessarily appropriate for all possible seniority applications (e.g. reduction-in-force, vacation preferences, transfers) within a single police department. Seniority should, to the extent possible, be tailored on an appropriate unit basis to each of the situations where it is to be applied.

NOTES

1. Aaron, "Reflections on the Legal Nature and Enforceability of Seniority Rights," 75 Harv. L. Rev. 1532, 1534-35 (1962).

CHAPTER 11

TRANSFERS AND ASSIGNMENTS

Transfers, in the simplest and most general sense, involve the movement of employees within the employment unit. For example, the term has been used to define a system of employment movement in an upward or lateral direction to fill either permanent or temporary vacancies. In addition, the term has been used to describe the procedure for filling vacancies in a shift or a watch. Finally, the term has been used with regard to procedures involved in layoff situations whereby an employee can avoid being laid off by a transfer to another position, "bumping" a less senior employee in the position based on seniority. The term as used in this chapter has been more narrowly defined to include only the first two of the above definitions, and we will not discuss the issues of downward transfers, or bumping, in layoff situations in this chapter.

FILLING VACANCIES

If there is no restrictive language in the collective bargaining agreement, arbitrators generally accept the principle that employers have the inherent right to determine whether a vacancy exists and, more specifically, whether the vacancy is to be filled. Accordingly, employers are well-advised to avoid any language which expressly or implicitly limits their option to determine whether a vacant position is to be continued. Management should always retain the prerogative to decide that a vacant position should simply be eliminated. Preferably, this should be set out either in the management rights section of the bargaining agreement or the section dealing with transfers.

Other language in the agreement may explicitly or implicitly limit an employer's freedom to decide assignment issues, however. The most frequent limitation on management rights in this area involves the use of seniority. Almost one-third of the agreements studied mandated some consideration of seniority in the transfer process. A few, 8 percent, of these agreements provided that seniority would be a primary factor to consider in transfer procedures. One agreement, for example, stated that:

> At the first shift preference selection occurring following completion of the required probationary period . . . an Employee shall be allowed to select his shift on a seniority basis. (Flint, Michigan.)

Another provided that:

> The City will fill the first two out of every three vacancies and/or permanent assignments that arise in basic patrol and implement its assignments based on seniority. (Cleveland, Ohio, and the Cleveland, Ohio, Police Patrolmen's Association.)

The restrictions imposed by these clauses force management to consider seniority as a primary factor over other criteria such as relative ability to perform required duties. Employers seeking discretion to make transfers based on qualitative factors should avoid this type of language.

Other agreements, 22 percent, listed seniority as a factor which management might consider when making a transfer decision. An example of this is an agreement which contained language stating that:

> Whenever possible, division vacancies shall be filled . . . giving first consideration to qualifications for the division, the position and seniority. (Ramsey County, Minnesota, and the Ramsey County Sheriff's Officers.)

If seniority is to be a factor which management must consider in making transfer decisions, language such as the above is preferable because it not only allows management to consider such factors as qualifications and productivity in addition to seniority, but also gives them flexibility to staff positions on a qualitative basis. For a more detailed discussion of seniority provisions, see Chapter 10.

Minimum staffing language is another example of language which may pose a restriction on an employer's freedom to decide assignment issues. These provisions may appear in a variety of forms: minimum number of personnel to be assigned to a squad car, ratios of superior officers to patrol officers, minimum numbers of personnel per department, and so forth. Regardless of form, however, such provisions invariably eliminate employer options in the reassignment of personnel, and should be avoided whenever possible. It should be noted that public employment relations boards in several jurisdictions have held that minimum staffing is not a mandatory subject of bargaining. In these jurisdictions, employers do not even have to bargain over the subject of minimum staffing. However, the impact of any such decisions may require negotiations. For a more detailed discussion of minimum staffing language, see Chapter 6.

Language calling for the posting of vacancies may not, standing alone, be sufficient to limit management's prerogatives in deciding whether to eliminate vacant positions or whether or when to fill them. In addition, language requiring posting and giving preference to senior employees in their given job classification has been held not to be an implied restriction on management's right to determine if a vacancy exists and whether to fill it. Finally, management's actual posting of a vacancy to solicit employee applications has been held not to be conclusive proof that the position is to be filled.

When language restricting management's discretion regarding transfers is used in bargaining agreements, it may be unclear whether management has the right to eliminate a vacant position or decide not to fill it. In such a situation, the arbitrator may be called upon to decide whether such a management right exists. Arbitrators will look at a number of factors in reaching this decision, but three appear to be most popular:

1. Past practices of the parties.
2. Other provisions in the contract.
3. The negotiating history of the parties.

To avoid the uncertainties noted above, management should explicitly reserve the right to decide all matters relating to transfer decisions. Roughly 36 percent of the agreements contained this type of language. One agreement, (Fresno County and Fresno County Deputy Sheriffs) for example, reserved to management the exclusive and sole right to determine the procedures and standards for employee transfers. In another, the union explicitly recognized that the employer had the exclusive right to "transfer employees from location to location and from time to time." (Hollywood, Florida.) Finally, one agree-

ment contained language to the effect that the employer reserved the right to "transfer employees to any job or any work, any time or anywhere." (Memphis, Tennessee.)

Unless statutory provisions dictate otherwise, matters involving the application of civil service laws and regulations should not be included in collective bargaining agreements. Including these matters may give rise to a multiple forum problem, where issues included in collective bargaining agreements, which may be subject to grievance arbitration procedures, are also covered by civil service procedures. Employees could conceivably confront the employer in both forums. Moreover, the decision of one such forum may not determine the results of the proceedings before the second forum. Thus, where transfer decisions are subject to civil service laws as well as regulations and remedies of the collective bargaining agreement, conflicting results may occur. This can be resolved by excluding transfers subject to civil service jurisdiction from any possible contract remedies.

POSTING AND JOB OPENING PROCEDURES

A significant minority of bargaining agreements studied established a procedure to facilitate the reassignment of personnel. Many of these procedures could be classified as either job opening or job posting procedures. Fifteen percent of the agreements contained job (vacancy) posting language. Such language usually obligates the employer to post a notice of a vacancy to afford the employees a specified time period to apply for the position. For example, one agreement (Cleveland, Ohio) contained language to the effect that the employer will post notices of vacancies for at least seven days prior to filling permanent positions.

More preferable than job posting is the job opening approach which was used in 16 percent of the agreements analyzed. Under job opening procedures, vacancies are not posted for formal bidding by the employees. Rather, employees may, in accordance with contractually established procedures, indicate in writing at a specified time or intervals of time those shifts, positions, and so forth, that they wished to be considered for in the event that a vacancy occurs.

One example of contractual language covering job opening procedures is as follows:

> Whenever a vacancy occurs in a shift or days off schedule, good faith efforts will be made, consistent with the efficient and effective operations of the Division of Police, to assign bargaining unit members to the shift or days off schedule of the vacant position based on seniority, skill, ability and work performance of members in the Bureau who requested, in writing, such assignment. Written requests for a change in a shift or days off schedule may be made at any time and such request will be retained until the end of the calendar year in which the request was made. Such request will be reviewed at least every six months.

This language is additionally noteworthy in its avoidance of strict seniority as the determining factor if two or more employees apply for the same position.

The advantage of a job opening procedure over that of job posting is, among other things, that there is no waiting period before the job can be filled. Moreover, the job opening approach leaves in the hands of management the initial decision as to what constitutes a vacancy or whether a particular vacancy is to be filled. This significantly reduces disputes in this area.

If job posting procedures are agreed to, it is important to distinguish between permanent and temporary or emergency transfers. A job posting provision, because of its waiting period, is obviously unworkable for emergency and some temporary vacancies. Accordingly, any job posting provision should contain express language providing that its terms are applicable only to permanent transfers and should define what a permanent transfer is. Finally, to the extent permissible under applicable law, contractual grievance arbitration over disputes about job bidding provisions should be expressly rendered inapplicable where governed by civil service rules and regulations.

SHIFT CHANGES

A few collective bargaining agreements contained provisions regarding the posting of monthly shift or watch changes. The amount of notice specified for posting changes in shift assignments should be kept to a minimum to reduce the possibility that posting will present administrative problems. Moreover, in order to ensure that such language does not preclude emergency reassignment of employees, an express provision excluding exigencies should be inserted.

RETRAINING AFTER ASSIGNMENT

Some agreements may contain language providing, in effect, that in the event an officer is reassigned, he or she is to receive the necessary training to properly perform the duties assigned. It is advisable that such language, though directed to a legitimate and proper departmental goal, be avoided whenever possible. These training clauses afford the union or the employee a contractual basis for preventing a transferred or promoted employee from being returned to a former position or disciplined for poor performance on the grounds that the employee has been unable to perform the duties of the new assignment at a reasonably acceptable level. Even admitting that performance in the new position has been deficient, the employee may still be able to interpose the defense that contractually required training was either not provided, or at least not provided to the extent required by the position in question.

Admittedly, training personnel following reassignment generally enhances the efficiency of reassigned officers. Implementing and using training procedures, however, arises from inherent management prerogatives and should not be dependent on contract language. In the absence of contract language to the contrary, an employer is ordinarily under no obligation to provide training to employees reassigned to new positions.

The concept of training must, of course, be distinguished from the concept of a trial period. Arbitrators generally adhere to the principle that, following reassignment, an employee must be given a fair opportunity to demonstrate the ability to perform the job in question. This inclination exists irrespective of contract language on trial or break-in periods.

CHAPTER 12

SICK LEAVE

The sick leave provisions in the collective bargaining agreements studied varied substantially in the rate at which sick leave entitlements accrued to the employees. There was no single formula or accrual rate which predominated among the agreements studied. Some agreements set forth the more traditional one day of sick leave for each month of service. Others used a different approach. One agreement, for example, stated that:

> All department employees shall earn sick leave at the rate of fifteen (15) days per year with unlimited accrual. (Baltimore County, Maryland, and FOP, Lodge No. 4.)

Another agreement contained the following language:

> Every full-time Employee shall be entitled to Sick Leave with full pay of one-half (1/2) days (computed at straight time) for each completed two-week pay period of service. (Macomb County, Michigan, and Macomb County Deputy Sheriffs Association.)

A final and rather unusual example of the use of a rate of accrual for sick leave was the following:

> Employees shall accumulate sick leave credits at the rate of .0576 of a working hour for each full hour on the payroll, excluding overtime. (St. Paul, Minnesota, Deputy Chiefs of Police.)

A few collective bargaining agreements expressly impose conditions on the accrual of sick leave entitlements. Some, for example, condition the accrual of sick leave on the completion of a specified minimum number of hours per week or days per month. An example of this might be the following:

> Sick leave will be accrued at the rate of two and one-half (2-½) days per month. Accumulation is based upon 35 or 40 hours work week. (Allentown, Pennsylvania, and FOP Lodge No. 10.)

Another example might be the proviso that the employee would accrue sick leave in a given month only if the employee worked at least ten days in that month. Alternatively, a few agreements expressly provided sick leave would not be credited until the employee had accumulated a specified period of service.

Limitation on Carrying Over Sick Leave Credits

A common issue is whether sick leave credits earned in a given year but not used can be carried over into the next year. There does not appear to be a uniform approach to this question. However, many of the agreements set forth limitations, generally expressed in the form of a maximum number of days, on the carry-over of sick leave from year to year. For example, one agreement provided that "Unused sick leave may be accumulated to a maximum of 125 work days. (Macomb County, Michigan, and Macomb County Deputy Sheriffs Association.) Another agreement set a maximum of 150 days. (Allentown, Pennsylvania, and FOP Lodge No. 10.)

A few of the agreements studied did not impose any express limitation on accumulating sick leave from year to year. Others expressly provided for unlimited accrual. Either approach could give rise to very significant contingent financial liabilities in the future. Unions are increasingly demanding contract language requiring the payout of unused accumulated sick leave in certain circumstances (such as the death or resignation of the employee). Where there are no express limitations on the accumulation of sick leave from year to year, an employee could conceivably accumulate sick leave equal to or exceeding an entire work year. This type of liability can impose a severe burden on governmental budgets.

Bonus Sick Leave Days

Some agreements made special provisions for employees who did not use sick leave or who used only a small percentage of their allowance. Typically, these agreements awarded additional paid leave days, expressed in the form of either additional sick leave days or of additional vacation or annual leave days. An example incorporating both of these bonuses was the following clause:

> Employees who do not use more than five (5) days of their sick leave banks during the preceding calendar year shall have three (3) additional sick leave days added to their sick leave bank and one (1) day added to their vacation bank for the following calendar year. (Livonia, Michigan, and Livonia Police Officers Association.)

An unusual application of the bonus sick leave idea was the following:

> Employees disabled through injury or sickness . . . shall receive full wages for a period equal to accumulated sick leave, plus six (6) months as provided herein. It is understood that in such cases accumulated sick leave shall first be utilized before the six (6) months, or any part thereof, shall be applied. It is further understood that the six (6) month period shall be available only in those years where the last available Annual Report of the City Civil Service Office shall show average sick leave used per Police Department Employee (based on the 1972 Annual Report method of calculating same) of eight (8) days or less. (St. Paul, Minnesota, and Deputy Police Chiefs.)

Employee Use of Sick Leave

Traditionally, employers have allowed sick leave for illness or injury to the employee himself. An example of this would be the following:

> Whenever an employee shall be injured, ill, or disabled from any cause, except in connection with outside employment, so as to be physically unfit for duty during the period of such disability, the City may grant a leave of absence with pay up to a maximum period of one year commencing from the date of such injury, illness or disability. (Elizabeth, New Jersey, and PBA Local No. 4.)

However, 53 percent of the collective bargaining agreements that contained sick leave provisions listed additional situations when employees could use sick leave. The most common of these situations was illness or injury to members of the employee's "immediate family." This type of provision contained several limitations.

One limitation in many of the agreements was a definition which limited the members of an employee's "family" which could be considered "immediate." One agreement, which allowed sick leave to be charged in the case of serious illness in the employee's immediate family defined the "immediate family" in the following manner:

> Immediate family shall be limited to the employee's spouse and children who reside in the employee's home. (Lansing, Michigan, and FOP Lodge No. 141.)

Another limitation typically set forth expressly in the agreement was that the injury or illness involving the family member be "serious" in nature. The Hialeah agreement, for example, provided that employees could use accrued sick leave, as necessary, due to the "*serious* injury or *acute* illness of any member of the employee's immediate family . . ." and that:

> In order for this type of absence to be paid, the injury or illness necessitating such absence shall be documented to the personnel department in the manner required by said department.

Other variations include language that limits sick leave coverage to illnesses that "necessitate the employee's absence from work" or "result in serious hardship to the employee's family." It is important that employers specifically define the term "immediate family" in the agreement, to prevent disputes over which relatives are included.

A final limitation in collective bargaining agreements that authorize the use of sick leave for serious illness in the immediate family is the imposition of a maximum number of days that the employee can take. An example of this might be the following:

> All members of the bargaining unit shall be permitted to use up to eighty (80) hours per calendar year of accrued sick leave, as necessary, due to the serious injury . . . of any member of the employee's immediate family . . .

Funeral Leave

The bargaining agreements studied often contained provisions that allowed employees to use accumulated sick leave in situations involving deaths in the immediate family. If an agreement contains this provision, it should specify both the class of deceased persons (for example, spouse, child, brother, sister, or parent) and a maximum number of days for the leave. An example of an agreement which defined the class of deceased persons was the following:

> In the event of a death in the immediate family of an employee, the employee shall be granted up to three (3) calendar days off, with pay, at the time of the emergency. Immediate family shall be defined as follows: spouse and children, mother, father, brother, sister, and grandparents of the employee and the employee's spouse. (Oklahoma City, Oklahoma, and FOP Lodge No. 123.)

A somewhat broader definition was contained in the following language:

> For the purposes of this Article, the employee's immediate family shall be defined as the employee's spouse, father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, grandparents, stepparents and stepchildren. (St. Petersburg, Florida, and St. Petersburgs PBA.)

Medical Appointments

Occasionally, the agreements allowed the use of sick leave for "medical, dental or optical examinations or treatment." Typically, such clauses are limited to the employee. When sick leave is extended to such matters as dental or optical examinations, the agreement should specifically require that the dental or optical examination be one that the employee cannot defer to off-duty hours or days.

EMERGENCIES

Occasionally, the sick leave provisions of the bargaining agreements studied referred to "emergencies." The following is an example of this provision:

> The emergency time off duty herein provided for applies only when the family death, sickness or injury does, in fact require time off from regularly scheduled duties and does not contemplate or grant an accrual or other permissible leave with pay periods. (St. Petersburg, Florida.)

In many cases, this emergency leave also covers injuries or illnesses to the immediate family. However, to the extent that these emergency provisions are not expressly limited, they could cover circumstances not involving medical difficulties. Because employees and employers often differ regarding the meaning of an "emergency," the collective bargaining agreement should define the term. The above clause, for example, limits emergency time only to family deaths, sicknesses or injuries, and only then in certain situations. Traditional emergency clauses generally require that the circumstance be unforeseeable. that the emergency occur through no fault of the employee. and that the employee cannot postpone dealing with the emergency until off-duty hours. Again, the agreement should impose a maximum number of days for the use of this leave.

RESTRICTIONS ON EMPLOYEE USE OF SICK LEAVE

Most of the agreements studied drew no distinction between injuries occurring in the line of duty (and presumably covered by workers' compensation statutes) and those injuries not related to duty. These contracts, therefore, may allow employees to claim both workers' compensation and sick leave benefits. To avoid this problem, some agreements established a procedure for off-setting benefits received under the workers' compensation statute with sick leave benefits. One agreement, for example, provided:

> Employees receiving benefits under the Pennsylvania Workers' Compensation Law will be paid for sick leave in an amount equal to the difference between their regular pay and their Worker's Compensation benefits. Such an employee who exhausts all sick leave benefits will receive Worker's Compensation payments only. (Allentown, Pennsylvania.)

Another provided:

> Any payments from temporary disability insurance of Workmen's Compensation insurance received by the employee shall be credited toward the pay referred to above. (i.e., leave of absence with pay) (Elizabeth, New Jersey.)

Excluded Illnesses

A few agreements specifically excluded illness or injuries arising in the course of outside employment. In *City of Detroit and Detroit POA*, 74 LA 609 (Roumell, 1980), the bargaining agreement provided for paid sick leave for all injuries "in the line of duty." An officer who had received a gunshot wound while off-duty during an exchange of gunfire with a motorist whom

the officer had chased after an altercation caused by the officer's temporarily blocking the motorist's throughway, filed a grievance when the city refused to allow him paid sick leave. The arbitrator in this case denied the grievance, finding that the injury complained of was not "in the line of duty."

Employers may want to include provisions in collective bargaining agreements which exclude illnesses or injuries attributable to any action within the control of the employee and outside the line of duty. Examples of these types of injuries may be self-inflicted wounds, use of drugs or alcohol, or engaging in criminal activity or conduct involving moral turpitude.

ADVANCE NOTIFICATION OF ABSENCE

About one-third of the agreements that contained sick leave provisions expressly required that the employee give the department advance notice of absence on any scheduled work day. These notification provisions were often accompanied by a clause that expressly conditioned receipt of sick leave benefits upon compliance with the notification requirement. The agreements varied in the amount of advanced notice required. Some of the agreements required simply that notification be given "as soon as possible." Other agreements required advance notice of a specified period of time; for example, either one hour or one-half hour before the employee was to begin work.

A more appropriate clause might be one which combines both of the above alternatives. This combined approach is particularly useful because it extends to the employer the advantages provided by each single approach. A model clause with this combined approach might be the following:

> The officer must notify his immediate superior as early as possible but in no event less than thirty minutes before his regularly scheduled starting time.

PROOF OF ILLNESS[1]

Over half (about 52 percent) of the agreements that contained sick leave provisions expressly required employees to submit evidence of illness or injury. Agreements should contain such contractual provisions because the case law in this area is somewhat conflicting, and without such a clause the employer's authority to require proof may be subject to challenge. One arbitrator, for example, although noting the existence of departmental rules requiring documentation of illness, held that the city could not compel an employee to provide documentation by a physician because the collective bargaining agreement was silent on the issue. In support of the conclusion, that arbitrator stated: "(An employer) may not establish conditions for eligibility other than those prescribed by the contract or past practices. (*City of Brockton, Massachusetts, and Massachusetts PBA*, LAIG 1718, August 14, 1976.) Another arbitrator, however, upheld the right of an employer to ask for a physician's statement verifying illness, on the grounds that it is "the right of the Company to confirm sick leave claims by appropriate controls, in the absence of specific contractual prohibition." Macomb County, Michigan.)

Circumstances For Requiring Proof of Illness

The agreements which specified a medical documentation requirement did so in various ways. One method was by language which gave the department discretion in deciding whether any medical documentation was necessary in a given situation. For example:

> The Employee may be required to produce evidence, in the form of a medical certificate or otherwise, of the adequacy of the reason for his absence during the time for which sick leave is granted. (Macomb County, Michigan.)

For the provision to be effective, the employer must request proof of illness at a time that allows the employee to comply with that request. If the employer waits to tell the employee of the decision to require a physician's statement until after the employee recovers and returns to work, the arbitrator may reject the documentation requirement as applied to that employee.

Other agreements contained language which limited the department's discretion in requiring medical documentation to situations involving absences of a specified minimum number of days.

> The Chief may request a doctor's verification of an employee's condition satisfactory to the City Physician. Medical certification will not be required to substantiate requests for approval of sick leave for three (3) days or less. A doctor's verification of illness may be required by the Chief regardless of duration in cases of frequent use of sick leave or when a pattern of sick leave uses indicates a potential abuse of sick leave privileges.

Other sick leave provisions set forth

SICK LEAVE

	Number	Percent
Contracts specifying additional reasons for use of sick leave benefits	67	48
Contracts requiring notice of sick leave absences	67	48
Contracts specifying when an employee might be required to submit documentation or proof of illness	42	30
Contracts with other sick leave provisions	52	37
Contracts contains no reference to sick leave	8	6

NOTE: Percentages do not add up to 100% (N = 140) because contracts may contain more than one provision.

when medical documentation must be submitted without the city having to ask for it. For example, one agreement provided:

> Injury, illness or disability must be evidenced by a certificate of a physician designated by the department to examine the employee. (Elizabeth, New Jersey.)

The advantage of this type of clause is that it operates automatically, and the employer need not request proof of illness before the employee must comply.

Finally, some agreements provided documentation would only be required where there is excessive absence or where there is potential for abuse. However, when a contract establishes a "suspicion of abuse" norm, the employer's decision to require medical documentation is subject to possible challenge on the grounds that the decision did not result from a reasonable suspicion of abuse. In other words, the decision can be tested by the question: Was the employer reasonable in suspecting sick leave abuse? In the absence of a reasonable suspicion, the arbitrator may invalidate the employer's decision to require medical documentation. An employer could show reasonable suspicion by establishing that the employee had been habitually absent, or through rumors that the employee had engaged in activities inconsistent with his illness.[2]

A better approach may be language which is combination of several of the methods described above. For example:

> The employer may at any time require an employee to submit documentation attesting to the necessity of the employee to be absent from work on account of illness or injury. Moreover, even if the employer does not specifically request medical documentation with respect to a particular absence, the employee must submit such documentation whenever one or more of the following conditions exists:
>
> 1. If the absence for which the sick leave is claimed exceeds _____ consecutive work days, or
>
> 2. If the employee has taken _____ number of individual (single) days of sick leave within the last twelve months, or
>
> 3. If the department has, for any reason, advised the employee that all future requests for sick leave must be supported by an acceptable medical certificate. Medical documentation shall be submitted in a form and manner acceptable to the department.

This method has several distinct advantages. First, it reserves the employer's right to determine when, and under what circumstances, medical documentation is necessary. In addition, it gives the employer the broadest range of discretion available. Finally, it specifies those situations when the employer would, as a matter of course, typically require medical documentation, and subjects them to an automatic submission requirement. This combined method requires that an employee automatically (without a request by the employer) submit medical documentation for certain defined absences and, further, for all other situations if the employer requests.

NOTES

1. Discussion here is limited to situations involving the employee's own illness or injury. When sick leave benefits are, by the terms of a collective bargaining agreement, available for use in situations other than the employee's personal illness, appropriate documentation language should cover those additional situations.

2. See, for example, *National Airlines, Inc.*, 43 LA 1169 (Black, 1964); *Veterans Administration and AFGE Local 1973*, 75 LA 623 (Sherman, 1980).

CHAPTER 13

COST OF LIVING ADJUSTMENT CLAUSES

Uncertain economic periods often prompt union demands for automatic wage adjustments during the term of the bargaining agreement. Union leaders try to include a cost of living adjustment (COLA) based on the consumer price index, since the CPI is a measure of monthly change in a fixed market basket of goods and services. However, a COLA clause warrants thorough management consideration. COLA clauses should generally be avoided. Adding a COLA clause to the bargaining agreement makes it impossible for managers to budget wage costs precisely, since they cannot predict changes in the CPI. COLA clauses also distort pay scales. Furthermore, granting an automatic pay increase may amount to fruitless spending, because union members who take the cost of living increase for granted will later pressure their bargaining agents for increases in the "basic" pay. COLA clauses put management in the position of providing benefits without getting concessions from the union in return. Unions argue that COLA payments only maintain the employees' buying power and that the employees deserve a "real" wage increase to improve their lot. However, once such a clause is agreed to, revision or retraction in subsequent negotiations is extremely difficult.

Management representatives also are reluctant to agree to COLA's because granting such a concession to one group of employees is likely to encourage other city employees to seek the same benefit. Collective bargaining of police agreements is often tied to benefits negotiated for other municipal employees, particularly fire fighters. Therefore, public employers must weigh carefully the consequences of granting a COLA clause to even one bargaining unit, since doing so would encourage expensive citywide demands for similar clauses.

Furthermore, many management representatives question the accuracy of the CPI as a basis for COLA calculations. The following questions should be raised when considering its use in collective bargaining agreements:

- Does the CPI *accurately* reflect consumer spending patterns, or does it assume that individuals continue to purchase all items at a constant rate?
- Do COLA payments based on the CPI aggravate inflation?
- When measuring hospital, medical, and dental costs, does the CPI reflect paid insurance, sick leave, or worker's compensation benefits?
- When measuring the increase in *cost* of goods and services, does the CPI also measure the changes in *quality* of production?
- Does the CPI erroneously assume that individuals purchase items that rapidly rise in price (such as housing) at a constant rate, when in fact they may be making other choices?

Negotiating COLA Clauses

Apparently, many city negotiators and policymakers are well aware of the problems inherent in COLA provisions. Over 80 percent of the contracts studied contained *no reference to cost of living adjustment clauses*. However, those who must accept a COLA clause to win necessary union concessions, and those who want to renegotiate an existing, unacceptable COLA clause should consider the following suggestions regarding the form of COLA provisions.

Benchmark Year for CPI Changes

The CPI has been rising annually. As a result, management representatives should set a standard for measuring CPI changes which will limit the time period used for calculating the COLA payment. Selection of a more recent "benchmark" produces a smaller differential, and consequently a smaller monetary adjustment.

For example, if the "benchmark" date of September, 1977, when the CPI U.S. city average was 184.0, were the basis of a payment made in September 1978, when the CPI U.S. city average was 199.1, the result would be a differential of 15.1 points. That figure would determine the level of payment. With a clause providing that a raise shall be granted "at the rate of a 1¢ adjustment for each 0.3 point change in the index," the use of a more recent benchmark date would save a city 31¢ per employee on an hourly basis. Therefore, management should try to use a recent benchmark, or even a system of moving benchmarks (a more recent date for each time a payout will be calculated) to minimize the possible change in total points.

Determining Dollar Amounts From CPI Changes

Two methods can be used for determining dollar amounts from CPI changes: the percentage match formula or the cents-per-point formula. The percentage match technique uses percentage changes in the CPI to determine the amount of wage increase. The cents-per-point technique allocates a specified monetary amount according to the point change in the CPI for hours worked.

If the CPI increased from 170 to 180 points during the applicable time period, the two methods would produce the following results:

Percentage Match

$$\frac{10 \text{ (original point level)}}{170 \text{ (total change in point level)}} = 5.88\%$$

Employees would receive a 5.88% wage increase.

Cents-Per-Point

Assume that employees receive $0.01 per hour for every full 0.3 point change:

$$\frac{10 \text{ (total change in points)}}{0.3 \text{ (contractual factor for change)}} = 33$$

33 x $0.01/hour = $0.33/hour

Wage Base Figure

Some COLA clauses use only the base salary or hourly rate to determine the base figure; others include premium or leave pay. Management representatives should stipulate in the agreement which figure they will use and should attempt to keep this amount as low as possible in order to reduce the employer's costs. One contract provided:

[C]ost of living adjustments are not a part of an employee's salary rate or straight time rate of pay and shall not be included in the base for calculation of any premium pay, benefits or other pay additive. (Sheriff's bargaining agreement of Genesee County, Michigan.)

Number of Payments

When negotiating a COLA clause, the number and timing of wage adjustments should be important management considerations. The COLA provision can set either annual payments on the anniversary date of the contract or more frequent payments. The payment date should not be too close to the effective date of the contract, because the "payout" may have little positive effect on employees who have recently begun to receive a wage increase.

On the other hand, a date set too close to the end of the contract term is undesirable since employees may receive a wage increase near the effective date of the next contract, which will de-emphasize the favorable cost of living adjustment in the employees' eyes. Also, the employer should be particularly wary of provisions for COLA payments after the collective bargaining agreement expires. With such a clause, the employer may unwittingly fuel a bargaining impasse by guaranteeing wage increases during prolonged contract negotiations.

Including Previous Payments in Base Wage Rates

Since COLA is tied to the Consumer Price Index, inclusion of COLA payouts in the base wage rates can inflate those rates significantly. If the CPI increases 10 percent, the employee's base wage rate could rise an equivalent amount. Under a total "fold in" technique, wage costs can grow dramatically even though employee organizations continue to press wage demands above the COLA adjustments. One alternative is for an employer to negotiate a COLA clause that provides for a payout separate from the base wage rate. Because the "fold in" technique can increase wage costs dramatically and unpredictably, some COLA provisions allow less than 100 percent fold-in, or specify that the amount included will be determined during subsequent negotiations. This latter technique allows bargaining flexibility without incurring on-going COLA costs, and can reduce costs. The least expensive method is the one time payout, with base rates remaining the same.

Floors and Caps

To shield the city from exhorbitant and unexpected costs, employers should consider a "cap" or maximum limit on cost of living adjustments. Contract language can provide, for instance, for a "maximum adjustment of eight and five-tenths percent (8.5 percent)," (bargaining agreement of Portland, Oregon.) or for "no quarterly adjustment in excess of six cents ($0.06) per hour . . . ." (Sheriff's bargaining agreement of Genesee County, Michigan.) These limits are strongly advised in order to protect the fiscal integrity of the city. Employers can also limit the point at which they begin to incur liability, a "floor," expressed either in points or percentages (e.g., after the CPI raises 6 percent). For example, one contract states: "[t]he Index must change a complete 0.3 to effect a 1¢ adjustment." (bargaining agreement of Livonia, Michigan.) Both the cap and floor serve to keep the total cost of such clauses to a minimum and should be included if a COLA clause is negotiated into the bargaining agreement.

Source of CPI Figures

The U.S. Bureau of Labor Statistics issues CPI data for a number of individual cities and for the average of U.S. cities. Because individual figures can differ substantially from one city to another, employers should use a "city source" that is related to their location. Employers should also compare individual figures to the "all cities" average to determine whether recent broad-based average data are more stable and more useful for budgeting. A provision concerning the effect of later adjustments to published CPI figures is also desirable, since such changes can increase the impact of a COLA clause. In the same way, some negotiators have included language that precludes use of adjusted CPI figures that are published late.

Negotiators should know that published CPI indexes for the various cities do not measure relative cost increases among those cities: the costs of living for all cities are assumed to have been equal in the year the index was set at 100, currently 1967. However, the index does reflect the extent to which certain costs have increased for each city since 1967.

Downward Adjustments

Although the CPI has not decreased recently, downward movement has occurred in the past and remains possible. Therefore, management should consider COLA language that provides for decreased payouts if the CPI decreases.

COST OF LIVING ADJUSTMENTS

	Number	Percent
Contracts not containing COLA language	113	81
Contracts containing general COLA language	5	3
Contracts containing restrictions on COLA's	22	16

CHAPTER 14

POLICE EDUCATION AND TRAINING

The role of education in law enforcement has grown significantly in recent years. Provisions covering education and training appeared in approximately 81 percent of the collective bargaining agreements studied. These provisions typically involve one or more of four major categories: job training, tuition reimbursement, incentive pay, and educational leave. Almost half of the agreements contained provisions covering two or more of the above categories. About one-fifth of all the agreements studied contained provisions dealing with three or more of the above categories. Finally, a few contained provisions dealing with all four categories.

JOB TRAINING

Over half of all the agreements studied discussed job training in some respect. These clauses were typically brief and did not reflect in detail the training requirements and procedures in effect in the department.

The use of seniority as a criterion for awarding training opportunities is a potential problem area. If by contract language or by past practice training opportunities have been conditioned upon seniority, the employer may not always be able to choose those employees most likely to benefit from training, or those who need training in a particular area beyond the department's minimum requirements. For this reason, language conditioning training opportunities upon seniority should be avoided. If possible, language should specifically be included which will allow management maximum discretion in determining which employees should have the opportunity to attend training sessions.

Another potential problem area is the determination of the rate of pay during training sessions. In one case, for example, police supervisors were required to take a management refresher course. Several supervisors were able to attend this class only on their days off or during the off-duty periods. Despite the contention by the city that there was precedent for not paying overtime for such classes, an arbitrator held that mandatory participation in the course qualified it as a special assignment, and ordered the city to pay overtime to those officers who had attended during their off-duty hours. (City of New Brunswick and PBA Local 23, 73 LA 174 (Chandler, 1979).)

TUITION REIMBURSEMENT

Approximately 35 percent of the agreements containing provisions on training and education dealt with the issue of tuition reimbursement. The vast majority of agreements containing tuition reimbursement language specified requirements and procedures for tuition aid. The following is an example of such a clause:

> 1. Tuition and textbook reimbursement shall be in accordance with the Veteran's Administration benefits and Safe Streets Act benefits pertaining thereto. In no event shall there be any duplication of these benefits paid to the employee.
>
> 2. Employees enrolled in Police Department approved courses not covered by Item 1 above shall be eligible for up to $150 per year tuition reimbursement.
>
> 3. Reimbursement for required textbooks of up to $50 per semester with a maximum of $100 per year shall be provided by the City in the event the employee is ineligible to receive textbook reimbursement under the provisions of Item 1 above.
>
> 4. Administration and control of the benefits of this provision shall be under the Chief of Police and in accordance with Common Council Resolution File No. 71-254. (Milwaukee, Wisconsin, and the Milwaukee Police Officers Association.)

Other agreements specifically set forth areas of course work which the city would recognize as aiding the development of professionalism or increasing employee proficiency in present or future duty assignments. These same agreements generally required all courses be part of a program leading to a degree or certificate in particular fields of study. Several agreements specifically set forth course descriptions as a way of ensuring city funds would not be used to finance educational pursuits which, in the view of management, do not develop police professionalism or increase police efficiency.

Employers should either set forth explicitly what courses or areas will be covered by the tuition reimbursement provisions, or define "job related" specifically. In one case, for example, an employer's obligation under the tuition reimbursement provision was limited to courses which were "job related." The arbitrator in this case upheld the city's refusal to reimburse an employee for a program which consisted of basic humanities courses, basing his decision on the fact that the city had not acted arbitrarily and capriciously. (City of Ann Arbor and Ann Arbor Police Officers Association, 76 LA 57 [Daniel, 1980].) Employers can avoid the uncertainty and potentially significant costs of submitting such decisions to arbitration by language specifically setting out covered areas or defining "job relatedness."

In addition, reimbursement plans which do not limit the amount of reimbursement available to eligible employees may subject the city to a potential cost above that anticipated or planned for in its budget. To reduce these unanticipated costs, language should be included which specifically limits the amount payable to an officer during a specified period of time. By including these limits, a municipal employer has a better chance to estimate the total cost of maintaining such a plan.

Many agreements provided departmental duties took precedence over course scheduling, or at least did not mention the conflict between the performance of duties and the scheduling of courses. Employers should insist on language which ensures that management possesses the sole discretion to determine whether the request of any employee can be accommodated without impairing the department's ability to provide efficient and continuous protection for the community. The employer should also ensure that honoring employee requests does not involve paying overtime for someone to substitute for the employee taking the course, and that the employee is responsible for finding a replacement for the time he or she will be away from duty.

Instituting and maintaining a tuition reimbursement plan arises for a variety of reasons. These may include the desire of the employees and the employee association to have such a plan, and the requirement that the employer bargain with an employee organization over such a plan. The single most important inducement for management is that the tuition reimbursement plan may give officers the incentive to undertake additional education or training that will benefit both the officer individually and the community as a whole. However, municipal employers should make every attempt to ensure that the plan is tailored to provide the employer with a workable degree of control over unanticipated costs and interruption of essential services. Employers should, therefore, try to achieve agreement on the following:

- The definition of employees eligible to participate in the plan;
- A limitation on the types of courses or fields of study recognized under the plan, and a requirement that all courses be certified by the appropriate institution as leading to a recognized degree in the specified field;
- A description of the institutions at which courses can be taken under the plan;
- The requirement that all courses must be approved in advance and that the course schedules will not conflict with scheduled tours of duty, or in the alternative, that in the case of conflict the city possesses the sole authority to determine whether requests can be accommodated;
- A description of types of expenses eligible for reimbursement (for example, tuition, fees, books, travel expenses, etc.);
- Procedures which include conditioning payment on satisfactory completion as specifically defined (including a minimally acceptable grade);
- The deduction of all amounts, whether or not actually received by an employee, reimbursable through other tuition assistance plans (for example, VA educational programs);
- Limitations on amounts available to each employee for a specified period of time; and
- The requirement of continuous employment for a specified period of time following completion of a course or the acquisition of a degree or certificate to qualify for total reimbursement.

EDUCATIONAL INCENTIVE PAY

About half of the bargaining agreements provided some form of incentive pay for employees who attempted to further their education. Generally, these clauses provided some form of extra compensation for employees taking courses at and obtaining degrees from recognized institutions of higher learning. Not all clauses, however, fit within this general rule. One agreement, for example, in addition to providing a more traditional educational incentive program, also contained the following provision:

> An officer shall qualify for bi-lingual pay upon the certification by an expert recognized by the Human Resources and Productivity Committee in the particular language that the officer can read, write, and converse in the particular language at an acceptable level of proficiency. Only those languages recognized by the committee as being necessary to the increased efficiency and productivity of the department shall qualify for bilingual pay. Any officer who qualifies for bilingual pay shall be paid $25 a month on the second paycheck of the month. (Albuquerque, New Mexico, and the Albuquerque Police Officers Association.)

The economic benefit an employee received from an incentive program varied with the number for course hours attained in police-related fields and the type of degree awarded to the employee. The following represents a typical plan:

> 1. The city will make the following annual payments for the completion of course work described in Item 4 below for all personnel in the bargaining unit who have police title and police powers (including the Police Matron classification) on the following basis, subject to the below listed provisions: $75 per year for officers with at least 16 credits, but less than 28 credits. $125 per year for officers with at least 28 credits, but less than 40 credits. $175 per year for officers with at least 40 credits, but less than 52 credits. $225 per year for officers with at least 52 credits, but less than 64 credits. $275 per year for officers with at least 64 credits, but less than 90 credits . . . $350 per year for officers with at least 90 credits, but less than 120 credits. $450 per year for officers with 120 or more credits, but not possessing a Baccalaureate Degree. $750 per year for a Baccalaureate Degree.
>
> . . . No payments will be made to employees for any year in which they do not remain in the employment of the Police Department for the full calendar year . . . . The above stated salary payment shall be over and above the base salary of the positions eligible for these payments.

TRAINING AND EDUCATION

	Number	Percent
Contracts allowing for job training generally beyond training for recruits	71	51
Contracts providing for tuition reimbursement	43	31
Contracts providing educational incentive pay	64	46
Contracts providing for educational leaves of absence	35	25
Contracts containing other training and education provisions	1	1
Contracts not referring to training and education	26	19

2. No employee will be eligible for these salary payments unless he has a minimum of five years service on the police force.

3. These payments will not be used in the calculation of overtime pay or in the calculation of pension benefits.

4. Courses approved for which payment will be made under this provsion will be as follows:

a. The courses of study leading to a Degree of Associate in Arts in Law Enforcement at Marquette University, Associate in Applied Science in Police Technology at Milwaukee Area Technical College, and a Baccalaureate Degree in Criminal Justice at the University of Wisconsin-Milwaukee shall be acceptable.

b. Individual courses taken at other colleges and universities that are acceptable for transfer by either Marquette University, the University of Wisconsin-Milwaukee or the Milwaukee Area Technical College to meet the requirements for an Associate or Baccalaureate Degree in Law Enforcment, Police Science Technology or Criminal Justice shall be acceptable.

c. Police officers who have earned either a Baccalaureate or an Advanced Degree in any social sciences granted by any college or university approved by the North Central Association of Colleges and Secondary Schools shall be entitled to the maximum educational bonus payment.

5. Administration and control of the provisions of this agreement shall be under the Chief of Police. (Milwaukee, Wisconsin, and the Milwaukee Police Officers Association.)

The rate of compensation did not appear in all agreements. Many agreements provided certain percentages of base pay for obtaining a specified number of credit hours or degree. Others provided for a salary step increase in varying amounts depending on the number of credit hours and the type of degree awarded. Still other agreements provided additional compensation for credit hours beyond a bachelor's degree and for a master's or other advanced degree in political science or other related fields. An example of this may be the following:

Credit hours shall be compensated for on a fixed-dollar amount as follows:

1. The first 80 hours shall be paid at the rate of $1 per month per credit hour; provided, that such payment shall be made only after the officer has attained 35 credit hours.

2. Bachelor's degree recognized by this program shall be compensated for at $100 per month.

3. Master's degree recognized by this program shall be compensated for at $125 per month.

4. A Ph.D recognized by this program shall be compensated for at $150 per month.

5. Payments shall be implemented monthly. (Albuquerque, New Mexico, and the Albuquerque Police Officers Association.)

As in the case of tuition reimbursement plans, educational incentive plans should include elements essential to the employer's retention of workable control over the unanticipated cost of the program; nine elements at the end of the discussion of tuition reimbursement plans apply equally as well to educational incentive plans. In addition, employers should also consider restricting employer payment to either incentive pay or tuition reimbursement, but not both. Such a practice would avoid a potential double payment for educational achievement.

Educational Leave

Of the four major categories of training and education clauses, provisions concerning educational leave appeared in the fewest number of agreements. These provisions applied in about one quarter of all the agreements studied. A typical example is the following:

Permanent full-time employees shall be eligible to receive a leave of absence which does not exceed one full year for the purposes of furthering education. Such educational leave shall be determined upon the recommendation of the Department Head and with the approval of the Division Director. Such educational leave may be extended for an additional year upon written request by the employee and upon recommendation of the Department Head and with the approval of the Division Director. (Memphis, Tennessee, and the Memphis Police Association.)

As mentioned above with the other categories, employers should ensure that potential problem areas are specifically addressed in the training and education clause. For example, eligibility should be defined so as to reflect the particular class of employees which management views are entitled to educational leaves: full-time or part-time, probationary or non-probationary, employees with a minimum number of continuous years of service, etc. One agreement, for example, limited those eligible for educational leave to employees who had completed at least one year of service. In addition, provisions for educational leave should include language reflecting the agreement of the parties on the effect of an employee's educational leave on seniority and longevity. An employer may agree to the general proposition that an employee should not lose employment status or accrued benefits by virtue of taking educational leave to pursue a course of study related to law enforcement. However, the employer should understand that any language equating the leave period with service time for advancement or pay purposes may, in fact, be providing a form of educational incentive pay in addition to existing educational incentive programs. Finally, a few agreements provided for short leaves of absence to attend seminars, conferences, briefing sessions, or other functions of similar nature. Employers agreeing to such language are well advised to include language which limits these absences to those which are intended to improve or upgrade the individual's skill or professional ability, and which do not interfere with the operation of the department.

Finally, to ensure a mutual benefit for the department and the community, employers might consider language which conditions educational leave upon a requirement of continued employment thereafter. An example of this might be the following:

The employee must agree in writing to continue working for the County for at least the following minimum periods of time after the expiration of the leave of absence:

Length of Leave Leave of Absence	Period of Obligated Employment
44-65 work days	24 months
22-43 work days	12 months
6-21 work days	6 months

(San Mateo County, California, and the San Mateo Organization of Deputy Sheriffs.)

CHAPTER 15

NO STRIKE CLAUSES

Strikes by employees of state, county and municipal governments are illegal in most states. The duties of police personnel and other employees in the protective services field are fundamental to preserving the health, safety, and welfare of the public, and any interruption in these services presents a serious risk to life and property.

The collective bargaining agreement between a public employer and the police union should contain no strike language, even in communities where strikes by police personnel are unlawful and where state statutes impose penalties for violating no strike legislation. Approximately 79 percent of the collective bargaining agreements analyzed contained language prohibiting strikes by uniformed employees. Various reasons support the use of such clauses irrespective of the legality of police strikes. First, no strike language gives notice to the police personnel and their bargaining representative that they have a *contractual* as well as legal commitment to the continuous delivery of police services. Second, no strike language may in fact be more comprehensive than existing statutory and case law and may provide for additional strike remedies. For example, contract language may establish (1) a broader definition of "strike"; (2) the union's responsibility in returning employees to their jobs in the event of a strike; (3) the union's undertaking to hold the city "harmless from liability or claims of third parties resulting from a police strike"; and (4) damages allowable from a strike. Third, such clauses buttress the argument that a strike or work stoppage during the term of the contract is illegal. Fourth, if the clause provides for disciplinary action, it forewarns employees of what can occur if they strike during the term of the contract. Finally, the contractual commitment not to engage in any strike continues for the term of the agreement regardless of whether the state legislature eliminates or modifies the statutory ban.

The key elements of a comprehensive no strike provision are:

- A definition of the word "strike."
- A recital of the steps the union must take to effect a return to work or a full resumption of services in the event of a slowdown or cessation of work.
- A statement as to penalties against the union for breach of the strike ban.
- A declaration that breach of the no strike clause subjects the offending employee(s) to discipline including discharge.
- A statement as to employees' access to grievance and arbitration procedures to contest the employer's determination of strike participation or the nature and extent of discipline imposed as a result of such participation.

Approximately 69 percent of the agreements defined "strike." A detailed definition, appearing in several bargaining agreements, read as follows:

> The Union may not participate in a strike during the term of this contract. For the purpose of this agreement a "strike" means the concerted failure to report for duty, the concerted absence of employees from their positions, the concerted stoppage of work, the concerted submission of resignations, the concerted abstinence in whole or in part by any group of employees from the full and faithful performance of the duties of employment with a public employer for the purpose of inducing, influencing, condoning or coercing a change in the terms and conditions of employment or the rights, privileges or obligations of public employment or participating in a deliberate and concerted course of conduct which adversely affects the services of the public employer, the concerted failure to report for work after the expiration of a collective bargaining agreement and picketing in furtherance of the work stoppage. (City of Orlando, Florida, and Orange County Police Benevolent Association, Inc.)

This language has several important elements. First, a strike is not necessarily a complete cessation of services; any partial withholding of services or any form of concerted job action which constitutes less than full and faithful performance of the assigned duties and responsibilities or which impairs essential city services also violates the strike ban. For example, officers reporting for duty out of uniform and refusing orders to perform their duty in uniform was held to be a concerted activity amounting to a strike. On the opposite end of the spectrum, overly meticulous adherence to rules by policemen was deemed to be a strike.

Second, this language prohibits any activities that interfere with police and emergency services. The ban, therefore, also prohibits interfering activities by off-duty police officers. Also, the above example can be used against the use of sick leave or the "blue flu" and other concerted, contagious illnesses. Finally, the all-encompassing "purpose" language reinforces the understanding that changes in working conditions can be achieved only by negotiation.

A portion of the above-quoted language could also arguably imply a duty not to engage in a sympathy strike. Less than 2 percent of the agreements contained language which either defined strikes to include sympathy strikes or which specified that sympathy strikes were prohibited. The objective of such langauge is not only to prescribe but to indicate to the employee that he or she cannot refuse to cross a picket line established by another labor organization if doing so would interfere with or impair the performance of the assigned duties. Such language may be the product of past experiences involving refusals by officers to cross "stranger" picket lines (picket lines established by other employees of the city or by employees of a private employer or by labor organizations representing these employees). Many public employer representatives have become aware that, in the private sector, a general proscription against strike activity during the term of an agreement may not necessarily apply to sympathy strikes,[1] and further, that the existence of a mandatory arbitration clause does not necessarily imply a commitment not to engage in a strike initiated to support the demands of other employees or their bargaining representatives. However, in those jurisdictions where strikes by uniformed employees are prohibited by statute, the intent of the

statute may include sympathy strikes without regard to any contractual language. Nevertheless, to avoid any misunderstanding or interpretational problems, public employers would be wise to include specific reference to sympathy strikes in the no strike article.

Many bargaining agreements prohibited union instigation, sanction or encouragement of a strike. Additionally, approximately 20 percent of the contracts spelled out the union's responsibility in a strike to bring about a return of employees or a full resumption of services. An example of such language follows:

> In the event of a strike, work stoppage or interference with the operation of the police department, the president of the police guild shall within 24 hours publicly disavow such strike or work stoppage and request the employees to return to work in an attempt to bring about prompt resumption of normal operations. Such request shall be made in writing with a copy of such written request supplied to the city. The guild shall notify the city within 24 hours after the commencement of such work interruption as to the measures taken to comply with the provisions of this article. (City of Spokane, Washington, and Spokane Police Guild.)

This provision reinforces the understanding that the union cannot sanction *any* strike. In addition, listing certain affirmative steps that the union must take reduces the union's opportunity to "passively" support a work stoppage or slowdown by its silence or inaction. Finally, a distinct advantage of such language is that it serves notice to the employees and the labor organization in the contract itself that specific affirmative action will be taken by representatives of the labor organization.

In many instances, the extracted "affirmative action" language was followed by language describing the liability of the union as well as that of an employee in strike activity situations. Approximately 6 percent of the agreements analyzed provided that violation of the no strike ban would make the union liable for damages and other penalties recognized by contract or statute. An example of such "strict liability" language follows:

> It is recognized by the parties that activities enumerated above are contrary to the ideals of professionalism and to the police department's community responsibility and that any violation of this article would give rise to irreparable damage to the city and to the public at large. Accordingly, it is understood and agreed that in the event of any violation of this article, the city shall be entitled to seek and obtain legal and/or equitable relief in any court of competent jurisdiction.
>
> For the purpose of this article, it is agreed that the employee organization shall be responsible and liable for any act committed by its officers and agents, which act constitutes a violation of the provisions herein. In addition to all other rights and remedies available to the city in the event of a breach of the provisions herein, the city shall have the right to unilaterally and without further notice terminate this collective bargaining agreement and withdraw recognition from the employee organization. (City of Hollywood, Florida, and Hollywood Lodge No. 21, Fraternal Order of Police.)

The liability of the union in some agreements was conditioned on its taking affirmative action set forth in the agreement. For example:

> If the lodge carries out its obligations under this section in good faith and has neither authorized nor ratified the action, it shall have no liability for any such action. (City of Dayton, Ohio, and Fraternal Order of Police Lodge No. 44.)

A unique example of the remedies that could be directed against the union if

NO STRIKE CLAUSE

	Number	Percent
Contracts specifically defining "strikes"	97	69
Contracts expressly forbidding sympathy strikes	2	1
Contracts expressly stating employees may be disciplined in striking	45	32
Contracts permitting grievances over employer determination that a strike occurred or that certain employees were engaged in a strike	6	4
Contracts denying access to grievance procedure in employer determinations	4	3
Contracts providing that union must take affirmative action to end strike	28	20
Contracts stating that union may be legally responsible for damages, fines, or penalties in event of strike	8	6
Contracts limiting union liability to failure to take affirmative action	15	11
Contracts containing other no-strike language	11	8
Contracts not containing no-strike language	29	21

its members violated the strike ban was found in one contract. The language read as follows:

> In the event during the continuance of its recognition the union, its officers, agents, or employees, or any of its members, acting individually or in concert with one another, engage in or encourage any association authorized strike or work stoppage against the county, including any of its departments and/or agencies, the deductions and payments of fair share contributions made in accordance with this agreement, including deductions and payments made to the association on behalf of employees who have signed and have on file current dues deduction (voluntary checkoff) cards, shall be terminated forthwith by the county. Thereafter, for a period of one year, measured from the date of the onset of such strike or work stoppage, no deductions whatever shall be made from the earnings of any employee nor shall any payment whatever be made to the treasurer of the union on account of dues deduction (voluntary checkoff) or fair share agreement contributions. (Milwaukee County, Wisconsin, and Milwaukee County Deputy Sheriff's Association.)

While citing the union's "liability" is not prerequisite to taking legal action against the union for violating a no strike ban, inclusion of a description of "extraordinary penalties" in the agreement is advisable. In the absence of a party's written agreement or express statutory authority, extraordinary sanctions may not be recognized by a reviewing agency and, therefore, an employer may not be able unilaterally to (1) suspend recognition of the union as the policemen's bargaining representative, (2) terminate the bargaining agreement, (3) deny union access to work sites, or (4) divert withheld dues to defray the cost of obtaining emergency and police services from alternate sources.

A majority of the agreements with no strike language also specified that any employee who participated in a strike was subject to discipline up to and including discharge. This understanding was usually a brief statement such as the following:

> Any employee who participates in or promotes a strike, work stoppage, picket line while working, slowdown, sick out or concerted failure or refusal to perform assigned work, may be discharged or otherwise disciplined by the county or the department. (Dade County, Florida, and Dade County Police Benevolent Association.)

This kind of language may not be necessary to sustain disciplinary action in all cases involving a strike but the recital of management's right to discipline striking employees clearly demonstrates to an arbitrator that strike activity is understood by the parties to constitute grounds for discipline up to and including discharge without regard to other discipline provisions of the agreement. In addition, if the agreement contains a "just cause" standard for discipline, the arbitrator may very well note that, by virtue of an express provision on discipline arising out of strike activity, the parties intended and understood that employee participation in a strike constitutes just cause. Finally, use of this kind of discipline language clearly informs the union and employees of the penalty which may be invoked if the employees engage in a strike.

An employee disciplined for strike activity will generally file a grievance protesting the employer's determination of his or her strike participation or the nature of the discipline imposed. In the absence of any contract limitation on grievance and arbitration procedures, an arbitrator will generally rule that such procedures are fully available in strike discipline cases. However, most of the agreements that discussed grievance and arbitration in a strike clause, permitted a limited right of arbitral review through the grievance and arbitration procedures. One such provision read as follows:

> The only question that may be raised in any proceeding, grievance, judicial or otherwise, contesting such action is whether the provision preventing strikes, slowdowns and concerted stoppages of work, intentional interruptions of employer operations or similar activities, was violated by the employee to be discharged or otherwise disciplined. (Jacksonville, Florida, and Florida State Lodge, Fraternal Order of Police for Jacksonville Consolidated Lodge No. 5/30 of Fraternal Order of Police.)

The impact of using language limiting recourse to grievance and arbitration procedures is obvious. First, as in the case of other provisions which should be included in a no strike article, the employees and the union understand another consequence of employees engaging in or the union support of a strike: limited arbitral review. Second, such language limits the scope of arbitral review to one specific issue: did the disciplined employee engage in a strike in violation of the no strike ban? This language can be used to restrict or exclude an arbitrator from considering whether the degree of penalty imposed by the employer was appropriate or inappropriate in the circumstances of the case and it reinforces the position that the agreement does not empower the arbitrator to determine whether the employer must bear some responsibility for the work stoppage and thus make an award reflecting the employer's behavior in the work stoppage.

NOTE

1. A broad no strike clause is insufficient, in and of itself, to constitute a waiver of statutory rights to engage in sympathy strikes. *Amcar Division, ACF Industries v. NLRB*, 106 LRRM 2518 (1981); also, a generally worded broad no strike clause does not constitute evidence of clear and unmistakable waiver of right to engage in sympathy strike or to strike over non-arbitrable matters that are not covered by the bargaining agreement. *Coca-Cola Bottlers Co. v. Teamsters Local 326*, 104 LRRM 2776 (1980).

CHAPTER 16

ZIPPER CLAUSES

The term "zipper" clause is used to describe contract language that provides, at a minimum, that the executed agreement constitutes the "sole" and "complete," "total," "entire," or "full" agreement between the parties and that there are no other agreements, written or oral, defining contractual rights and obligations of the parties and bargaining unit employees. Using that definition or standard, a review of the police agreements analyzed reveals that approximately 57 percent of the contracts contained a zipper clause. The simplest form of zipper language in these contracts stated:

> The following constitutes an entire agreement between the parties and no verbal statement shall supersede any of its provisions. (City of Madison, Wisconsin, and The Madison Professional Police Officers Association.)

This provision states than the current contract is the only understanding between the parties. Such language implies that, for the duration of the contract, no other agreements defining rights and obligations of the union, bargaining-unit employees, or management are in effect or form part of the written collective bargaining agreement.

A more comprehensive zipper clause specifies what the simpler clauses imply. For example:

> The Employer and the Union agree that the terms and provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto with respect to the subject matter herein. (State of Hawaii, City and County of Honolulu, County of Hawaii, County of Maui, County of Kauai, and State of Hawaii Organization of Police Officers.)

This language accomplishes more than the simple zipper clause because it specifies that neither party can deny rights or responsibilities set forth in the current contract by invoking prior, contrary oral or written agreements. The purpose of this language is to reflect the understanding of the parties that there is but *one* agreement which sets forth contractual rights and duties of the parties. Therefore, where any right or responsibility is specifically set forth in unambiguous terms in the existing agreement, neither party can deny such right or evade such responsibility by asserting contrary understandings appearing in previous agreements or in oral statements of the parties.

The preferred zipper clause includes provisions on "unlimited opportunity to bargain" and "waiver of bargaining during the term" of the contract. "Unlimited opportunity to bargain" language reflects the parties' equal and unqualified bargaining rights during negotiations and that during the course of negotiations, both parties had unlimited or unqualified rights or opportunities to make demands and proposals over bargainable subjects and the bargaining agreement reflects the agreement or understandings emanating from such opportunities. This language can hinder union attempts at further negotiations during the term of the agreement.

An interesting twist to the concept of "unlimited opportunity to bargain" language was found in two of the police contracts analyzed. The zipper clause stated that *only* the union, "having had an opportunity to raise all matters in connection with negotiations and proceedings resulting in this Agreement . . . is precluded from initiating any further negotiations for the term thereof." (City of Milwaukee, Wisconsin, and Milwaukee Police Supervisors Organization.)

Approximately 39 percent of the police contracts with zipper clauses included "waiver of bargaining during the term" language, which exempts both parties, by mutual agreement, from further negotiations while the contract is in effect. (This exemption does not include negotiations on a successor agreement.) Most of these provisions waive the parties' rights to bargain over all subjects, even unforeseeable issues or events. A few agreements limit the "waiver during term" to subjects either in the agreement itself or within the knowledge and experience of the parties. Thus, neither party could refuse to bargain over an unexpected matter by saying that the other party had waived its right to bargain during the contract term over unforeseeable events or matters. Provisions that limit waiver to matters covered in the contract can dilute the value of a zipper clause by opening the door to bargaining demands on many other subjects.

The language that follows is an example of the preferred comprehensive zipper clause.

> The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this Agreement. (Genesee County, Michigan, Board of Commissioners and the Genesee County Sheriff and Fraternal Order of Police Lodge No. 145, Genessee County Sheriff's Department Division.)

This kind of clause can protect the employer from union bargaining demands on contract items during the term of the collective bargaining agreement. This language also may prevent union pressure on the employer to negotiate subjects not in the contract or to reconsider contract items that the union would like to modify or eliminate altogether.

However, it is important to note that these clauses do not, standing alone, imply that all rights and obligations are expressly set forth in the agreement or that other duties and rights not specifically recited

therein are nonexistent or unenforceable. Management possesses certain rights, even in the absence of the management rights or reservation of rights clause where such rights are not otherwise modified or abridged by the terms of the agreement.

Likewise, even though a contract does not expressly provide a certain benefit or privilege, an employer may be required to recognize additional obligations or restrictions on management rights by virtue of a maintenance of standards or maintenance of benefits clause. Finally, the extracts quoted, standing alone, most likely would not be found to constitute a waiver of the union's right to bargain on mandatory subjects before the employer can make any unilateral implementation or change. In short, additional contract language is necessary to eliminate other employer obligations and employee rights. Municipal employers should refer to applicable state law to determine the overall impact of a zipper clause, including whether waiver language justifies unilateral action.

Rulings from authoritative, private-sector sources, however, have established the overall significance of these types of comprehensive zipper clauses. For example, both the National Labor Relations Board and federal courts have decided that only a "clear and unmistakable" waiver of bargaining rights excuses private sector employers and unions from having to bargain over employment terms and conditions not in the contract. The NLRB has eased this stance somewhat in recent years and may honor the waiver provisions of a zipper clause if other factors supporting the waiver agreement are present. Courts reviewing NLRB refusals to honor zipper clauses have not always agreed with the NLRB and have validated the waiver impact of such clauses. A similar undefined approach exists in the public sector as well. State courts and agencies often rely on private-sector decisions when interpreting local collective bargaining laws. For this reason, municipal employers are wise to consider the advantages of comprehensive zipper clause language. However, even a comprehensive zipper clause does not apply when employers unilaterally implement or modify negotiable practices. Zipper language can mean that the employer need not respond to union bargaining demands during the term of a contract; it does not mean, however, that the employer may unilaterally alter certain practices without bargaining with the union.

A noteworthy variation of zipper language in some of the contracts provided:

> It is expressly understood that all matters not included in this agreement are by intention and design specifically excluded and fall within the powers, duties and responsibilities of the city.

An excellent example of a more expansive zipper clause from a management perspective provided that:

> The parties agree that each has had full and unrestricted right and opportunity to make, advance and discuss all matters properly within the province of collective bargaining. The above and foregoing agreement constitutes the full and complete agreement of the parties and there are no others, oral or written, except as herein contained. Each party for the term of this agreement specifically waives the right to demand or petition for changes herein, whether or not the subjects were known to the parties at the time of execution hereof as proper subjects for collective bargaining. Subject to the Maintenance of Standards Clause, it is agreed that the employer shall not be subject to provide additional wages, compensation, or emoluments of any kind beyond that which is specified in this contract; and should any future State law be enacted which requires cities to compensate City Police in any manner beyond the scope of this contract, the compensation or emolument levied against the City shall be waived and disclaimed. It is additionally agreed that except as specifically modified by this agreement, benefits and emoluments provided Police Officers by State legislation shall remain in effect throughout the term of the agreement, notwithstanding the fact that during the life of the contract legislation may become effective which would negate certain benefits or emoluments. (City of San Antonio, Texas, and the San Antonio Police Officers Association.)

This language reserves to management certain powers over matters not regulated by terms of the collective bargaining agreement, and implies the union's specific agreement with these discretionary powers. In this sense, the clause might support a claim that the union waived bargaining rights over unmentioned topics. Courts or agencies may, however, require specific and unequivocal waivers of bargaining rights on particular matters, and the quoted language may not suffice as proof of those waivers. The answer will depend on interpretation of relevant state statutes.

Nevertheless, comprehensive zipper clauses are advisable additions to collective bargaining agreements from a management viewpoint because they may serve the employer's interests. Regardless of uncertain legal arguments, zipper language may have the positive practical result of forestalling challenges to management.

Finally, employers must consider a zipper clause, as with all other contract provisions, in conjunction with other clauses contained in a collective bargaining agreement. For example, if an agreement contains employee-oriented language such as a maintenance of standards clause guaranteeing unmentioned benefits, a zipper clause may be of little value to an employer seeking to do away with such benefits. On the other hand, a zipper clause may buttress a strong management rights clause or other employer-oriented language in a collective bargaining agreement.

ZIPPER CLAUSES

	Number	Percent
Contracts stipulating that both parties have had unlimited rights to bargain	36	26
Contracts stipulating that the parties waive all rights to further bargaining	54	39
Contracts containing other zipper language	23	16
Contracts with no zipper clause	59	42

CHAPTER 17

DURATION AND REOPENER CLAUSES

Duration or reopener provisions typically involve language in the collective bargaining agreement which fixes the term of agreement and includes conditions which influence continuation of the agreement past a certain date. These conditions may appear in one "duration" clause or, as is often the case, they may appear within several sections of the collective bargaining agreement. Roughly 96 percent of all the bargaining agreements studied contained some reference to "duration." Analysis indicated that this language is comprised of one or more of the following provisions:

1. The contract automatically terminates, or automatically continues, after a specific date.
2. One or more parties are allowed to reopen negotiations during the life of the contract.
3. Deadlines are specified with respect to requests for renegotiations, submission of proposals and/or submission of intent to modify or terminate the agreement.
4. Language providing in the event a part of the agreement is deemed to be invalid, the invalidated part will be renegotiated by the parties.

Almost half, 46 percent, of the agreements contained some combination of two of the above factors. Over one-third, 37 percent, of the agreements included some combination of three of the above factors. Finally, 3 percent contained language which covered all four of the above areas.

Automatic Renewal or Termination

Provisions for either automatic termination or automatic renewal of the agreement after a date specified were found in 89 percent of the contracts. From a management perspective, ideal language would be that which allowed either automatic termination or automatic renewal at the option of the employer. This could be done, for example, by language to the effect that if the union does not act to terminate the contract by a certain date, the agreement will continue automatically unless terminated by the employer. An even better example would be if the union does not act by a certain date, the agreement continues on a day to day basis subject to termination by the employer. Such language would increase the bargaining power of the employer and allow him maximum flexibility in contract negotiations. None of the agreements, however, contained this type of clause. The agreements providing for either automatic termination or automatic renewal contained either one or the other of the two clauses but not both.

Approximately 50 percent of all the agreements contained language which provided the agreement automatically continued after a certain date if either of the parties were unable to negotiate a new one, or either party had not acted to terminate the agreement. Typically, after the automatic renewal period, the agreement was subject to termination after specific notice was given. The following language is characteristic of many of these clauses:

> This Agreement shall be effective as of the first day of January, 1979, and shall remain in full force and effect to and including the 31st day of December, 1980, subject to the right on the part of the city or the federation to open this agreement by written notice to the other not later than April 1, 1980. Failure to give such notice shall cause this agreement to be renewed automatically for a period of twelve (12) months from year to year. (Minneapolis, Minnesota, and the Police Officers Federation.)

A slight variation of this was contained in the following contract:

> This contract shall be effective as of the first day of July, 1978, and shall remain in full force and effect until June 30, 1980, and shall be automatically renewed from year to year thereafter, unless either party shall notify the other in writing not later than January 1, 1980, that it wishes to modify this contract for any reason. The contract shall remain in full force and effect during the period of negotiations. (Salem, Oregon, and Salem Police Association.)

Several agreements contained a more comprehensive clause providing for automatic renewal. For example:

> This Agreement shall become effective July 1, 1979, and shall continue in effect to and including June 30, 1981, and from year to year thereafter unless on February 1, 1981, either party serves notice to modify this Agreement on the expiration of this Agreement. In the event such notice is given, negotiations shall begin within fifteen (15) days of said notice. This Agreement shall remain in full force and be effective during the period of negotiations until the signing of a new Agreement or until notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph.
>
> In the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than ten (10) days prior to the desired termination date which shall not be before the expiration date set forth in the preceding paragraph. (New Bedford, Massachusetts, and the Massachusetts Police Officers' Association.)

Finally, a somewhat unusual example of an automatic renewal clause is language from the following agreement:

> The term of the Memorandum of Understanding shall be from the date it is effective as set forth in Article V, when all conditions for implementation have been accomplished; it shall continue in force and effect until replaced by a succeeding Memorandum of Understanding, or midnight, June 30, 1980, whichever occurs later, except that it may not be in conflict with the provisions of Charter Section 254. (Long Beach, California, and the Long Beach Police Officers Association.)

Provisions that the agreement would automatically terminate upon a certain date either specifically or by implication were found in 39 percent of the contracts. An example of the more explicit termination clause is the following:

> The term of this Memorandum of Understanding shall commence on the date when the terms and conditions for its effectiveness, as set forth in Article IV, Implementation, are fully met. This

Memorandum of Understanding shall expire and otherwise be fully terminated at twelve midnight of June 30, 1981. (Los Angeles County, California, and the Association for Los Angeles Deputy Sheriffs.)

An example of the other type of termination clauses is the following:

This Agreement shall be in effect for a period of two (2) years beginning July 1, 1979, and ending June 30, 1981. (Des Moines, Iowa, and the Police Unit Bargaining Association.)

Reopener Clauses

Almost one-quarter of the agreements allowed one or both of the parties to reopen negotiations during the term of the contract on specific issues. Typical of this language is the following:

This Agreement shall be and continue in full force and effect until December 31, 1982, except that the economic portion of this Agreement, relating to salaries and wages of all classifications, as well as the Employee pension contribution, shall be open for negotiations between the parties for fiscal year 1982, whereby said benefits shall be open for negotiation for the period effective January 1, 1982. (Macomb County, Michigan, and the Macomb County Deputy Sheriffs' Association.)

A few allowed for the reopening of negotiations in the event that the political body required to approve the bargaining agreements failed to do so. One example of this is the following:

It is understood by the parties hereto that the portions hereof regarding wages, fringe benefits and other economic conditions of employment are subject to enactment of an appropriate ordinance by the . . . City Council pursuant to the . . . City Charter and that failure of the City Council to enact an ordinance accurately and thoroughly providing for the wages, fringe benefits and economic conditions as approved herein shall immediately allow the Lodge to cancel all portions of this Agreement and, upon notifying the Administration of this, shall require the Administration to immediately thereafter reopen good faith negotiations on all wages, hours and conditions of employment. (Columbus, Ohio, and FOP Lodge No. 9.)

Deadlines

Well over half, 64 percent, of the agreements specified deadlines with respect to requests for renegotiation, submission of proposals and/or submission of a party's intent to modify or terminate the contract. An example of this is the following:

In the event either party hereto desires to negotiate a successor Memorandum of Understanding, such party shall serve upon the other during the period from January 1, 1981, through January 31, 1981, its written request to commence negotiations, as well as its full and entire written proposals for such successor Memorandum of Understanding with the exception of salary proposals which shall be presented no later than March 1, 1981.

Upon receipt of such proposals, negotiations shall begin no later than thirty (30) calendar days after such receipt or March 1, 1981, whichever is later. An impasse concerning the matters under negotiation shall be declared automatically if full and entire agreement on the terms of a successor Memorandum of Understanding is not reached by April 17, 1981, unless the parties mutually agree to continue negotiations. (Los Angeles, California, and the Association for Los Angeles Deputy Sheriffs.)

Savings Clauses

About half of the agreements contained language to the effect that in the event a part of the agreement was deemed to be invalid, the invalidated part would be renegotiated by the parties. Typical of such a clause is the following language:

If any article or section of this Contract or any addition thereto shall be held invalid by operation of the law or by any lawful tribunal having jurisdiction, or if compliance with or enforcement of any article, or section should be restrained by such tribunal, the remainder of this Contract and addendums, shall not be affected thereby and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or section. (Salem, Oregon, and the Salem Police Association.)

For management there is no one set of recommendations in these areas, except to repeat the need to protect the ability to make changes to meet public service requirements. For example, if the existing contract is well written from a manager's view, then a continuing contract clause is to management's benefit. On the other hand, if significant language changes are desired, then a definite termination date would help.

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GENERAL REPORTING SERVICES

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GOVERNMENT EMPLOYEE RELATIONS REPORT—a weekly summary of current events in government employee labor relations. Published by the Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037. In addition to the weekly summary, the service comes with a two-volume Reference File.

PUBLIC EMPLOYEE BARAINING—a bi-weekly subscription published by Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Illinois 60646. Subscription incudes a three-volume loose-leaf Reporter; Current Reports; and Public Bargaining Cases, a series of bound casebooks that include the texts of selected landmark public employee bargaining court decisions.

PUBLIC PERSONNEL ADMINISTRATION/LABOR-MANAGEMENT RELATIONS—a bi-weekly subscription service published by Prentice-Hall, Inc., Englewood Cliffs, New Jersey 07632. The service provides reference material in two looseleaf volumes which is updated through bi-weekly reports containing Report Bulletins, Cross Reference Tables, and Replacement Pages.

Several other reporting services which may be useful to public sector practitioners are listed below. Although some of these present primarily private sector information, they should not be overlooked as they often contain news and developments that are relevant to the labor relations practitioner in state and local government.

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COMPREHENSIVE CHART

KEY

NR—No reference or report on this subject appears in the contract

Y—The contract refers to this subject, but the reference does not correspond to the code letters.

1. GRIEVANCE AND ARBITRATION PROCEDURES

A. Definition of "Grievance"

N—Narrow, meaning that certain employment-related matters are specifically excluded from the grievance procedure.
L—Limited, meaning that grievances must relate to the interpretation, administration, or application of the express terms of the contract.
B—Broad, meaning that most matters arising out of the employment relationship are grievable.
O—Omitted, meaning that the contract does not define "grievance."

B. Processing Grievances on Employer Time

I—Implied need for employer approval because of contract's silence on the subject.
R—Specifically restricted as to how many employees can participate at one time and/or how many hours or meetings they can spend processing a particular grievance on employer time (usually without loss of pay).
U—Relatively unrestricted or a "reasonable" amount of employer time allowed (very often subject to department approval and needs), usually without loss of pay.
?—Not allowed, meaning processing takes place during nonworking hours.

C. Final Step in the Procedure

F—Final and binding arbitration completes the procedure.
A—Advisory arbitration or fact finding is the last step.
C—The chief, sheriff, city manager, personnel director, mayor or third party entity makes the final decision on grievances.
O—Final step is arbitration, but the contract does not specify whether the arbitration is binding or advisory.

D. Other Information

D—The contract either requires or allows an oral first step for grievance processing.
J—The contract specifically limits the arbitrator's jurisdiction or authority.

2. MANAGEMENT RIGHTS

TYPE I—Lists extensive rights that are not grievable. (Few contracts used the residual rights doctrine, providing that management's inherent rights are not grievable).
TYPE II—Lists extensive rights but implies by silence that the use of these is grievable.
TYPE III—The clause is relatively less extensive and detailed in specifying rights, and implies by silence that the use of these rights is grievable.
TYPE IV—Endorses residual rights (employer retains "rights inherent in management").
TYPE V—Specifically states that the exercise of management rights is subject to the grievance procedure, meeting and conferring, negotiation, or appeal to a third-party entity.

3. DISCIPLINE

TYPE I—There is no arbitral review of disciplinary matters or, in a few cases, there is limited review of "minor" disciplinary action.
TYPE II—Disciplinary decisions are subject to grievance and arbitration procedures.
TYPE III—The disciplined employee or the union has a choice of grievance and arbitration procedures or third-party procedures as a method of appeal.
TYPE IV—Discipline is mentioned in the contract, but information on review is lacking.
MR—The reference treats discipline as a management right.
P—The contract refers to use of progressive discipline.
J—The standard for discipline is just cause, cause, or proper cause.
O—The contract specifies other standards for discipline.

4. THIRD-PARTY ENTITIES

TYPE I—The power of the third-party entity is not diminished by the contract (except in a few contracts that make **only minor** discipline grievable).
TYPE II—The power of the third-party entity is subject to the contract (i.e. third-party decisions are reviewable through arbitration or by the chief or city manager).
TYPE III—Employee has choice in **disciplinary** matters (i.e. a disciplined employee may choose either the grievance arbitration or the third-party entity procedure.
O—The third-party entity is mentioned, but no information is given in the contract either on the third party's relation to the grievance procedure, or on the extent of the third party's grievance or disciplinary jurisdiction.
D—The third-party entity has **exclusive** jurisdiction on appeals of disciplinary actions (may be limited to major disciplinary actions such as suspension or discharge).

5. DURATION

T—Automatically **terminates**, either specifically or by implication.
C—Automatically continues (often subject to termination after notice is given).
R—The contract contains reopeners during its term.
D—Deadlines are specified with respect to request for renegotiation, submission of proposals, and/or submission of intent to modify or terminate the contract.
I—Contract provides that in the event a part of the contract is deemed to be invalid, the invalidated part will be renegotiated by the parties.

6. COST OF LIVING ADJUSTMENTS (COLA)

R—The clause contains one or more significant restrictions.
G—The clause uses general language.

7. REDUCTION IN FORCE (RIF)

CR—The clause describes circumstances that justify a layoff (often including the phrase "or for other legitimate reasons").
N—The contract justification for layoff is based on the standard of **necessity.**
S—If a reduction in force occurs, selection of employees for layoff will be **strictly** by seniority.
(S)—Seniority is a factor, but not the only factor, used to select employees to be laid off.
MR—The reference treats reduction in force as a management right.

8. TRAINING AND EDUCATION

JT—Contract provides for job training usually beyond that which is given to new recruits or to meet minimum qualifications for entry-level positions.
TR—Contract provides for tuition reimbursement (sometimes limited to education related to police work).
IP—Contract provides incentive pay to those who have completed specified educational requirements.
EL—Contract contains provisions for educational leaves of absence.

9. NO-STRIKE CLAUSE

D—Clause specifically defines "strike" or describes acts that constitute a strike.
S—No-strike clause expressly prohibits sympathy strikes.
DI—Contract specifically states that an employee may be disciplined for violating the no-strike pledge.
G—Bargaining agreement provides that, for no-strike discipline, grievance and arbitration procedures are available ONLY to review employer determination that breach of no-strike commitment occurred or that certain employees engaged in a strike.
NG—Contract provides that employer determinations as to existence of strike, the number or identity of offenders and appropriate discipline **are not** subject to review in accordance with grievance and arbitration provisions.
A—No-strike article provides that, in the event of a strike, the union must take affirmative action to end stoppage or slowdown.
L—Contract states that the union is liable or legally responsible for damages, fines **or** penalties in the event of a strike.
A/L—Contract states that the union's strike liability is limited to situations in which it fails or refuses to take the affirmative steps set forth in the agreement.

10. ZIPPER CLAUSES

U—The clause mentions or specifically implies that the parties had unlimited opportunity for discussion during negotiations.
W—The parties have agreed to waive their rights of further bargaining during the term of the contract.

11. SICK LEAVE

A—The contract specifies additional reasons for the use of sick leave benefits.
N—An employee must notify the department of absence, usually before starting time.
D—The contract specifies when an employee may be required or is required to submit documentation or proof of illness.

12. SENIORITY

NR—No reference or report on **how seniority is applied** appears in the contract.
P—Seniority applies in primary areas (for example, transfers, filling vacancies, reductions in force, and often recall, job or shift assignment, or promotion).
S—Seniority applies in secondary areas (for example, vacation or days off preference, personal leave, assignment of overtime).
E—Seniority is the exclusive factor or sole determinant used in a given area.
O—Application of the seniority principle is either by seniority and qualifications (or experience, merit, special training) or by seniority and a significant form of management discretion.
D—Department-wide seniority (or in a few cases, city-wide seniority) is used for the application of seniority in a given area.
O—Another system of application is used (such as seniority by unit, rank, etc.).

These code letters are combined to give a complete idea of how each contract applies the principle of seniority.

T—The contract specifies when seniority rights will terminate.

13. TRANSFERS

O—Transfers take place through a job **opening** procedure (i.e, requests for transfers are filed by employees before an opening occurs).
P—Transfers take place through a job **posting** procedure.
S—Seniority is a primary factor in the transfer procedure.
(S)—Seniority is a secondary factor in the transfer procedure.
MR—Transfers are treated as a management right.

14. RULES AND REGULATIONS

CM—Refers to creation or modification, thus:
CM/MR—The reference treats creation or modification of rules as a management right (some contracts provide that management has this right as long as the creation or modification does not conflict with the collective bargaining agreement).
CM/N—Prior notice is mandatory (apparent silence as to consultation).
CM/C—Consultation is mandatory (apparent silence as to prior notice).
CM/N&C—Prior notice and consultation are mandatory before creating or changing rules.
CM/NEG—New or changed rules must be negotiated or the product of mutual accord.
D—The clause provides for discipline for violation of rules and regulations.
GRP—The contract expressly provides that either the union or an employee can grieve the reasonableness or application of a particular rule or regulation.

15. MAINTENANCE OF STANDARDS

NEG—Contract expressly prohibits change in any benefits or conditions either during the term of the agreement or without prior negotiation or mutual accord.
C—Consultation or meeting and conferring must precede change of any existing benefit or condition.
N—Prior notification must precede any change.
S—The maintenance of standards clause pertains to a specified number of subjects.

16. STAFFING REQUIREMENTS

MR—Management has the right to determine manpower requirements. There are two modifiers to "MR":
1) S—Specific language confers this right on management.
2) O—Other language is used which **could** confer the right to determine manpower requirements on management.

17. SUBCONTRACTING

MR—Management has the right to subcontract: there are two modifiers to "MR":
1) S—Specific language confers this right on management.
2) O—Language is used which **could** confer the right to subcontract on management.

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	Date and Term of Contract	Job Action	Grievance Procedure				Management Rights	Discipline	Police Officers Bill of Rights	Civil Service/Third Party Entities	Duration	Cost of Living Adjustments	Reductions in Force	Training and Education	No Strike Clauses	Zipper Clauses	Sick Leave	Seniority	Assignments and Transfers	Rules and Regulations	Maintenance of Standards	Staffing Requirements	Contracting Out
						Definition	Procedure	Final Step	Other																	
Akron, Ohio	240,000	F.O.P.	406	(3/31/81) 2 yrs.	NO	L	R	F	D, J	III	I; J	Y	CSC	R, I, C, D	NR	NR	JT	D, A/L	NR	Y	S/Q/D P/Q/D	MR, (S), O	NR	NR	MR-O	MR-O
Alameda County, Calif.	1,090,000	Deputy Sheriffs' Assn. AFL/CIO Local #3	573	(12/6/80) 1 1/2 yrs.	YES	L	R	F	D, J	NR	NR	Y	CSC I	R, I	NR	Y	EL, JT, IP	D	NR	A, D	S/E/D	Y	NR	NR	NR	NR
Albuquerque, NM	316,000	Albuquerque Police Officers' Assn.	500	(3/31/81) 1 3/4 yrs.	NO	N	R	C	NR	Y	I	Y	Personnel Bd. I	C, I	NR	N, S	JT, IP	Y	Y	Y	P/E/O, P/Q/D S/Q/O, S/E/O	MR, (S), O	CM/MR	NR	NR	NR
Allentown, Pa. (Supervisors)	105,000	F.O.P. Lodge #10	150	(12/31/81) 1 yr.	NO	O	U	F	J	III	II; J	NR	NR	D, T	R	S, CR	JT	D, G, DI	U, W	N, D	P/E/O S/Q/O / T	P, (S)	Y	NR	MR-O	MR-S
Anaheim, Calif.	211,700	Anaheim Police Assn.	282	(10/9/80) 3 yrs.	NO	B	Z	F/C	D, J	Y	NR	NR	NR	C	NR	Y	IP	D	NR	Y	NR	MR	NR	C	Y	NR
Baltimore County, Md. (Sheriff)	672,623	F.O.P. Lodge #4	1264	(6/30/81) 1 yr.	YES	B	U	F/A	D, J	V	I; J	NR	I-D	I, C, D,	NR	S	JT	D	Y	Y	S/E/O P/E/O P/Q/D	MR, O, (S)	CM/MR, GR	NR	MR-S	MR-S
Beaumont, Texas	130,000	International Brotherhood of Police Officers	216	(9/30/81) 2 yrs.	NO	L	U	F	J	III	II; J	NR	CSC, but grievance procedure used instead	I, R	NR	S, CR	JT, IP	A, D, DI	NR	Y	P/E/D S/E/D T	MR	CM/(N+C)	NEG	Y	MR-O
Boston, Mass. (Patrolmen)	563,000	Boston Police Patrolmen's Assn.	NR	(2/1/80) Last Extension Agreement	NO	N	R	F	D, J	IV	I	NR	CSC I-D	C, I	NR	NR	J, T, IP	D, DI, A/L	NR	A, D	NR	MR	Y	NEG/S	NR	NR
Boston, Mass. (Supervisors)	563,000	Boston Police Superior Officers Federation	NR	N/A (7/1/79)	NO	N	R	F	D, J	IV	NR	NR	CSC I	N/A	NR	NR	IP	D, A/L	NR	A, D	NR	MR	CM/MR	NR	NR	NR
Bridgeport, Conn.	120,000	AFSCME Local 1159	371	(6/30/81) 4 yrs.	NO	B	R	F	NR	Y	II; J	Y	CSC II	T, O	NR	NR	JT, TR	Y	NR	Y	S/E/O	MR	GR	NR	NR	Y
Buffalo, NY	348,000	Buffalo Police Benevolent Assn.	1,062	(6/30/82) 2 yrs.	YES	L	U	F	D, J	III	I; OJ	Y	CSC I-D	C, D	NR	NR	NR	D, L	NR	Y	P/Q/D P/E/O S/E/O	MR, (S)	Y	NEG	MR-S	MR-O
Cincinnati	410,000	F.O.P. Queen City Lodge #69	NR	12/24/78 12/19/81	NO	L	U	F	D	Y	NR	NR	NR	R, C, D	NR	NR	NR	D	Y	A	S/E	P	NR	Y	MR-O	MR-O
Cleveland, Ohio (Rank & File)	550,000	Cleveland Patrolmen's Assn.	1400	(12/31/80)	NR	L	U	F	J	III	III; J	NR	CSC III	I, C, R,	NR	MR	JT	D, DI, A	U, W	A, N, D	S/E/O P/E/D	MR, S, P/O	CM/MR	NR	MR-S	MR-O
Cleveland, Ohio (Supervisors)	550,000	F.O.P.	300	(12/31/80) 2 yrs.	NR	I	O	C	NR	III	IV; J	NR	NR	I, C, R	NR	MR	NR	D, DI, A	Y	Y	NR	MR	CM/MR	Y	MR-S	MR-O
Columbus, Ohio	622,000	F.O.P. Lodge #9	1100	(9/30/81) 3 yrs.	NO	B	R	C	D	V	I; J, P	Y	CSC IV	R, I, C, D	NR	CR	JT, TR	NR	NR	A, D	P/Q/D S/Q/D	MR, (S), O	CM/N, GR	NEG/S, N, C	MR-O	Y
Contra Costa County, Calif.	232,000	Deputy Sheriffs' Assn.	375	(9/30/80) 1 3/4 yrs.	NO	*	*	*	*	NR	NR	NR	NR	T	NR	NR	EL, TR JT, IP	NR	NR	A, D	P/Q/D	MR, O, (S)	NR	NR	NR	NR
Corpus Christi Texas	NR	Corpus Christi Police Officers Assn.	NR	(7/31/81) 1 yr.	NO	L	I	F	D	II	II, J Major Disc. can be appealed to Dist. Court	Y	CSC O	C	NR	MR	IP	D	Y	A	P/Q/D	MR	CM/MR, D	Y	MR-S	MR-S
Dade County, Fla.	1,600,000	Police Benevolent Assn.	2,200	(9/30/82) 2 yrs.	NO	N	R	F	D, J	V	I, J	Y	Hearing Examiner I-D	T, R	NR	S, CR	JT	D, DI	U, W	Y	P/Q/O, S/Q/O S/E/O	MR, O, (S)	CM/MR, D	NEG	MR-S	MR-O
Davenport, IA	101,900	Iowa State Policemen's Assn. Collective Bargaining Unit Local #2	NR	4/1/81-3/31/84	NO	L	I	F	J	I	II	NR	CSC I-D	R, C, D	R	Y	JT, IP, TR	Y	Y	D	NR	Y	CM/M, GR	N	MR-O	MR-S
Dayton, Ohio	203,600	F.O.P. Lodge #44	378	(3/2/80) 2-1/2 yrs.	NR	B	U	F	D, J	V	II; J, P	Y	CSB I	I, C, D	R	MR	JT	A/L, D	NR	A, N, D	P/E/O, S/Q/O S/Q/D	MR, P	CM/MR D	NR	MR-S	NR
Des Moines, Iowa	201,000	Police Unit Bargaining Assn.	250	(6/30/81) 2 yrs.	NO	N	R	O	D, J	III	II; J, O	NR	CSC I	I, T	NR	CR, S, N	EL, TR, JT	D	U, W	A, D	P/E/D, P/Q/D S/Q/D	MR, P, (S)	CM/MR GR	NR	MR-O	MR-O
Detroit Mich. (Rank & File)	1,314,206	Detroit Police Officers' Assn	3,700	(6/30/80) 3 yrs.	NO	B	R	F	D, J	III	III	Y	Board of Police Comm'rs III	T, I	NR	S, CR	TR	D	U, W	A, N, D	P/E/D, P/Q/D S/Q/O, T	MR, O, (S)	CM/MR	NEG	MR-S	MR-O

*Per County Ordinance Code

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	Date and Term of Contract	Job Action	Grievance Procedure				Management Rights	Discipline	Police Officers Bill of Rights	Civil Service/Third Party Entities	Duration	Cost of Living Adjustments	Reductions in Force	Training and Education	No Strike Clauses	Zipper Clauses	Sick Leave	Seniority	Assignments and Transfers	Rules and Regulations	Maintenance of Standards	Staffing Requirements	Contracting Out
						Definition	Procedure	Final Step	Other																	
Multnomah County, Ore. (Sheriff)	143,350	Multnomah County Deputy Sheriffs' Assn.	206	(6/30/81) 2 yrs.	NO	L	U	F	D, J	I	II, J	Y	Merit System CSC O	I, T, D	R	Y	EL, TR JT, IP	A, D, DI	U, W	A, D	P/Q/D, S/Q/D	MR	CM/N	NEG	MR-O	MR-S
Nassau County, N.Y. (Supervisors)	1,310,447	Superior Officer's Assn.	465	(12/31/80) 2 yrs.	NO	N	A	A	D	III	I	Y	CSC I	I	NR	MR, CR	JT	D	W	Y	S/Q/D	NR	D	NR	MR-O	MR-O
Nassau County, N.Y. (Rank & File)	1,310,447	Patrolmen's Benevolent Assn.	3,000	(6/30/80) 1-1/2 yrs.	NO	N	U	A	D	III	I	Y	CSC I	I	NR	MR, CR	JT	D	W	Y	S/Q/D	NR	D	NR	MR-O	MR-O
Newark, N.J. (Supervisors)	329,250	Police Superior Officers Assn.	NR	(6/30/80) 2 yrs.	NR	L	I	F	D, J	III	III; J	Y	CSC IV	D, T	NR	NR	NR	D, DI, A/L	W	Y	S/E/O, T	MR	CM/MR GR, N	Y	MR-O	NR
Newark, N.J. (Rank & File)	329,250	F.O.P. Lodge #12	970	(12/31/80) 2 yrs.	NR	L	R	F	J	III	III; J	Y	CSC IV	I, D	NR	S	NR	D, DI, A	W	D	P/E/O, S/E/O T	MR	CM/MR, GR, D, N	Y	NR	NR
New Bedford, Mass.	101,000	Mass. Police Assn.	270	(6/30/81) 2 yrs.	NO	L	U	F	D, J	IV	II; J	NR	CSC IV	C, D,	NR	NR	JT, TR, IP	D	NR	A, D	S/Q/D P/Q/D - P/E/O	MR, P, S, (S)	Y	NEG	MR-S	Y
New Castle County, Del. (Supervisors)	400,000	AFSCME Local #3109	5	(6/30/83) 3 yrs.	NO	L	R	F	D, J	I	I; J	NR	NR	C, D	NR	(S)	EL	A	NR	A, N, D	P/Q/D, T	P, (S)	CM/MR	NR	MR-O	NR
New Castle County, Del. (Officers)	400,000	F.O.P. Lodge #5	225	(3/31/81) 1-3/4 yrs.	NO	B	R	F	J	IV	II	Y	II	C, D	NR	N, S	EL, JT	F	NR	A, N, D	P/E/O, S/E/O T	Y	NR	Y	NR	NR
New Rochelle (Rank & File)	70,800	Police Assn. of New Rochelle	NR	(12/31/79) 2 yrs.	NR	N	U	F	J	III	IV; J; MR	NR	CSC I	C, D	NR	MR	NR	F	NR	D	NR	NR	Y	NR	NR	MR-O
New Rochelle, N.Y. (Superior Officers)	70,800	New Rochelle Police Superior Officers Assn.	NR	(12/31/80) 3 yrs.	NR	N	U	F	J	III	IV; J, MR	NR	CSC I	C, D	NR	MR	TR	Y	NR	D	NR	NR	Y	NR	NR	MR-O
New York, N.Y. (Detectives)	7,149,300	Detectives Endowment Assn.	2783	(6/30/80) 2 yrs.	NO	B	U	F	D, J	NR	I	Y	CSC O	R, T	NR	NR	NR	D	NR	Y	NR	NR	CM/(N, C) GR	C	Y	NR
New York, N.Y. (Police Officers)	7,149,300	Patrolmen's Benevolent Assn.	16,652	(6/30/80) 2 yrs.	NO	B	U	F	D, J	Y	I	Y	CSC O	R, T	NR	S, CR	JT	D	NR	Y	P/Q/D, P/E/D	MR, (S), Y	CM/(N, C) GR	C	Y	Y
New York, N.Y. (Sergeants)	7,149,300	Sergeant's Benevolent Assn.	2312	(6/30/80) 2 yrs.	NO	B	U	F	D, J	NR	I	Y	CSC O	R, T	NR	S	JT	D	NR	Y	P/E/D	Y	CM/(N, C) GR	C	Y	Y
New York, N.Y. (Lieutenants)	7,149,300	Lieutenant's Benevolent Assn.	811	(6/30/80) 2 yrs.	NO	B	U	F	D, J	NR	I	Y	CSC O	R, T	NR	NR	NR	D	NR	Y	NR	NR	CM/(N, C) GR	C	Y	NR
New York, N.Y. (Captains)	7,149,300	Captains' Endowment Assn.	360	(6/30/80) 2 yrs.	NO	B	U	F	D, J	NR	I	Y	CSC O	R, T	NR	S	JT	D	NR	Y	P/E/D	Y	CM/(N, C) GR	C	Y	Y
Oakland, Calif.	339,200	Oakland Police Officers Assn.	600	(6/30/81) 2 yrs.	NR	B	R	F	D, J	Y	III; J	NR	CSB III-D	IT	R	NR	IP, TR	NR	U, W	Y	NR	MR	GR	C	NR	NR
Oklahoma City, Okla.	386,000	F.O.P. Lodge #123	850	(6/30/80) 1 yr.	NO	B	R	F/A	D	III	II	Y	II	C, D, I	NR	S, N	IP	D, A	NR	A	S/Q/D, P/E/O P/Q/D, T	NR	CM/N D, GR	NR	MR-S	NR
Omaha, Neb.	365,000	Omaha Police Union Local #1	524	(12/31/80) 2 yrs.	NO	L	R	F	J	II	III; J, O	Y	Personnel Bd III	C, D, R	G	CR, S	JT, EL	D, A	NR	A, N, D	P/Q/D, P/E/O S/E/O	MR, (S)	CM/MR, D	NR	MR-S	MR-S
Orlando, Fla.	130,000	Orange County Police Benevolent Assn.	265	(5/3/81) 2-1/3 yrs.	NO	L	U	F	D	V	II; J	Y	O	D, T, R	NR	S	JT, EL, TR	D, S, DI, A, G	NR	A, N, D	P/E/D, P/Q/D S/Q/D, T	MR	CM/(MR, N), D	NEG	MR-S	MR-S
Phoenix, Ariz.	770,000	Phoenix Law Enforcement Assn.	1270	(7/5/81) 1 yr.	YES	N	R	A/C	D, J	I	I; J	Y	CSC I	C, D, I	NR	(S)	TR, JT/EL	Y	U, W	Y	P/Q/O, S/Q/O	MR	CM/MR	NR	MR-S	MR-O
Pittsburg, PA.	424,000	F.O.P. Lodge #1	1,447	NR	NO	L	R	F	J	III	II	NR	I-D	NR	NR	Y	JT	D	Y	A, D	S/E/O	MR	CM/N	NEG/S	MR-S	NR
Portland, Ore.	366,383	Portland Police Assn.	650	(6/30/81) 2 yrs.	NO	N/L	R	F	J	I	III; J	Y	CSB III	C, D	R	S	EL, IP, JT	D	NR	A, D	P/Q/O, P/E/O S/E/O	MR	CM/N	NEG, GR	NR	MR-S
Prince George County, Md. (Sheriffs)	750,000	F.O.P. [illegible]	813	(6/30/80) 3 yrs.	NO	B	U	F	D, J	IV	II	Y	NR	I, C, D	NR	NR	TR, IP, JT	D, DI, A	NR	Y	NR	Y	CM/CR, GR	C	NR	NR
Racine, Wis.	98,000	Racine Policemen's Professional Benevolent	NR	1/1/80, 12/31/81	NR	N	R	F	J	I	MR	NR	II, D	T, D	R	MR	EL; IP	D, A, DI, G	U, W	N, D	S/O/P/E	P/S	CM/MR, GR	NEG	MR-S	MR-S

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	Date and Term of Contract	Job Action	Grievance Procedure				Management Rights	Discipline	Police Officers Bill of Rights	Civil Service/Third Party Entities	Duration	Cost of Living Adjustments	Reductions in Force	Training and Education	No Strike Clauses	Zipper Clauses	Sick Leave	Seniority	Assignments and Transfers	Rules and Regulations	Maintenance of Standards	Staffing Requirements	Contracting Out
						Definition	Procedure	Final Step	Other																	
Detroit, Mich. (Supervisors)	1,314,206	Detroit Police Lieutenants & Sergeants Assn.	1,126	(6/30/80) 3 yrs.	NO	L	R	F	D, J	III	III, J	Y	Board of Police Comm'rs III	C, D, I	NR	S, CR	EL, TR	D	U, W	A, N, D	P/Q/D, P/E/O S/Q/O, S/E/O, T	O, (S)	CM/MR	NEG	NR	MR-O
Elizabeth, N.J. (Rank & File)	113,000	Policemen's Benevolent Assn. Local #4	260	(12/31/81) 2 yrs.	YES	L	Z	F/C	J	III	III, J	NR	CSC IV	D, C	NR	MR, CR	TR, JT	D, DI	U	D	T	MR	CM/MR, D, GR	NR	MR-S	MR-S
Elizabeth, N.J. (Supervisors)	113,000	Police Superior Officers' Assn.	56	(3/31/82) 2 yrs.	NR	L	I	F/C	D, J	III	III; J,	NR	CSC, IV	D, C	NR	MR, CR	TR, JT	D, DI	U	D	S/E/O, T	MR	CM/MR, D, GR	NR	MR-O	MR-S
Erie, PA.	129,000	Haas Memorial Lodge #7	209	(12/31/80) 1 yr.	NO	L	R	F/C	D	Y	II	Y	NR	I, C, D	NR	S	EL, IP, JT	NR	Y	A, D	P/E/D, S/Q/D S/E/O	MR, P	CM/C	Y	Y	NR
Evanston Ill.	69,000	Combined Counties Police Assn., Evanston Chapter	NR	3/1/81-2/28/82	NR	L	I	A	J	I	J	NR	O	T, D	NR	MR	NR	D, DI	Y	Y	NR	MR	CM/MR	NR	MR-O	MR-O
Evansville, Ind.	140,000	F.O.P.	241	(12/31/80) 1 yr.	NO	O	I	C	D	III	I	Y	CSC, I	R, D, C	NR	Y	NR	D	NR	Y	NR	NR	CM/MR, D	NEG/S	NR	MR-O
Flint, Mich.	159,611	Teamster's Local #214	217	(6/30/80) 3 yrs.	NR	L	R	F	D, J	IV	III	NR	Police Trial Board III	I, C, D	G	S	EL, TR, JT	A, D	U, W	A, N, D	P/E/D, P/E/D S/E/D, T	S	Y	NEG	Y	NR
Fort, Wayne, Ind. (Officers)	165,000	Police Benevolent Assn.	195	(3/11/81) 2 yrs.	NO	L	U	F	D, J	III	II; J	Y	NR	C, D	NR	S, N	JT, IP	NR	W	Y	P/Q/D, P/E/D S/E/D	MR, S, (S)	CM/N, GR	NR	MR-S	MR-O
Fort Wayne, Ind. (Supervisors)	165,000	F.O.P. #14	85	(5/21/81) 2 yrs.	NO	L	U	F	D, J	III	II; J	Y	NR	C, D	NR	MR	IP	NR	W	Y	Y	MR	CM/N, GR	NR	MR-S	MR-O
Franklin County, Ohio (Sheriff)	1,851,096	F.O.P. Lodge #9	213	(12/31/80) 1 yr.	NO	B	R	C	D	V	III; JP	Y	IV	C, D, I	NR	MR, CR	TR, EL	NR	NR	A, N, D	P/Q/D, S/Q/D	MR, (S), O	CM/N GR	N, C	MR-S	MR-S
Fremont, Calif.	132,000	Fremont Police Officer's Assn.	141	(12/31/81) 1 yr.	NR	O	NR	NR	NR	NR	NR	NR	NR	C, D,	NR	NR	IP, JT	NR	NR	A	NR	Y	NR	NEG/S	NR	NR
Fresno, Calif.	200,000	Fresno Police Officer's Assn.	303	(6/30/82) 3 yrs.	NO	O	I	A	NR	III	IV; MR	NR	NR	I, R, T	NR	MR, CR	IP	Y	NR	NR	S/E/O, P/Q/O	O, (S)	NR	NR	MR-S	MR-O
Fresno County, Calif. (Deputy Sheriffs)	490,800	Fresno Deputy Sheriff's Assn. Unit #1	300	(1/1/81) 1-1/3 yrs.	NO	B	R	C	D	II	IV; MR	Y	CSC, I	I, D, T	NR	MR, CR	IP, JT	D	W	A, D	NR	MR	MR	Y	MR-S	MR-S
Fresno County, Calif. (Sheriffs)	490,800	Fresno Sheriff's Assn. — Unit #35	25	(1/1/81) 1-3/4 yrs.	NO	NR	NR	NR	NR	NR	NR	NR	County Boards, O	I, T, D	NR	NR	IP, JT	NR	W	Y	NR	NR	NR	Y	NR	NR
Garden Grove, Calif.	123,000	Garden Grove Police Assn.	142	(6/30/80) 3 yrs.	NO	NR	NR	NR	NR	II	NR	NR	O	NR	R	CR	IP, EL, JT	NR	NR	A, N, D	P/Q/D, S/E/O	P, (S)	CM/MR	NEG/S	MR-O	MR-S
Genesee, County, Mich. (Sheriff)	NR	F.O.P. Lodge #145	NR	(12/31/79) 2-1/3 yrs.	NR	B	R	F	D, J	V	III; JP	NR	NR	I, C, D	R	CR, N, (S)	EL, JT	G, DI	U, W	D	P/Q/D, P/Q/O S/E/O, T	MR	CM/MR D, GR	NR	MR-S	MR-S
Glendale, Calif.	140,000	Glendale Police Officer's Assn.	151	(6/30/83) 3 yrs.	NO	O	R	NR	NR	I	IV	Y	CSC O	T	R	MR, CR	JT, TR	D, DI, A/L	W	A, N, D	S/Q/O, S/E/O	MR	CM/MR	NR	MR-S	MR-S
Grand Rapids, Mich.	186,000	F.O.P.	235	(6/30/80) 3 yrs.	NO	L	R	F	J	III	III J	Y	CSC III	C, D, I	NR	CR, S	IP, TR	D, DI, NG	U, W	A, N, D	P/E/O, P/Q/O S/Q/O, T	MR, (S), P	CM/(N + C)	NEG	Y	MR-S
Hartford, Conn.	124,000	International Brotherhood of Police Officers, Local 308	398	(6/30/81) 3 yrs.	NO	L	U	F	D, J	I	II; J	Y	NR	C, D	NR	CR, N, S	NR	D	U	N, D	P/Q/O, P/E/O S/E/O, T	MR, (S)	CM/(N + C) GR	Y	MR-O	MR-O
Hayward, Wis.	1,600	Hayward Pol. Assoc.	NR	(7/1/80-7/1/81)	NR	B	R	F	J	Y	IV	NR	Adjustment Bd.	C, D, I	NR	S	IP, EL	D	NR	N, A, D	P/S/E	MR(O)	NR	GR	MR-S	MR-O
Hialeah, Fla.	135,000	F.O.P. Lodge #12	215	(9/30/80) 1 yr.	NO	B	I	F	D, J	II	II; O	Y	CSC O	C, D, R	NR	NR	JT	D	Y	A, D	P/Q/D, S/Q/O	MR, (S)	CM/N	NEG/N	MR-O	MR-S
Hollywood, Fla.	120,000	International Brotherhood of Police Officers Local #621	250	(9/30/80) 2 yrs.	YES	B	I	F	D, J	II	III	Y	CSB III	C, D, R	NR	S	Y	D, DI, L	W	Y	P/E/O, S/E/O	MR	Y	NEG/S	MR-O	MR-S

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	Date and Term of Contract	Job Action	Grievance Procedure				Management Rights	Discipline	Police Officers Bill of Rights	Civil Service/Third Party Entities	Duration	Cost of Living Adjustments	Reductions in Force	Training and Education	No Strike Clauses	Zipper Clauses	Sick Leave	Seniority	Assignments and Transfers	Rules and Regulations	Maintenance of Standards	Staffing Requirements	Contracting Out
						Definition	Procedure	Final Step	Other																	
Ramsey County, Minn. (Sheriffs)	476,225	Teamster's Local #320	140	(12/31/80) 2 yrs.	NO	L	U	F	D, J	Y	III; J, P	Y	III	I, C, D	R	S	TR, JT	DI, A	NR	A, N, D	P/Q/D, P/E/O S/E/O	O, (S)	NR	NR	MR-S	NR
Riverside, Calif. (Police Officers)	165,000	Riverside Police Officer's Assn.	240	(6/30/81) 2 yrs.	NO	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	W	NR	NR	NR	NR	NR	NR	NR
Riverside, Calif. (Supervisors)	165,000	Riverside Police Officer's Assn.	Part of 240 Above	(6/30/81) 2 yrs.	NO	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	W	NR	NR	NR	NR	NR	NR	NR
Rochester, N.Y.	275,000	Locust Club, Inc.	627	(6/30/82) 2 yrs.	NO	L	R	F	D, J	Y	NR	NR	CSC, O	C, D	NR	NR	EL, TR, IP	NR	U, W	N, D	P/Q/D, P/Q/O S/Q/D	MR, (S) P	CM/NEG, GR	NR	NR	NR
Sacramento, Calif.	254,413	Police Officer's Assn.	512	(6/25/82) 2 yrs.	NO	L	I	F	D, J	III	II; J	Y	CSC, O	R, T	R	CR, S	JT, IP	D	NR	Y	P/E/O, P/Q/D S/E/O, T	MR, O/P, (S)	NR	NR	MR-O	MR-O
Sacramento County, Calif. (Nonsupervisory)	749,000	Sacramento County Deputy Sheriff's Assn.	784	(6/30/83) 3 yrs.	YES	L	R	F	D, J	III	II; J	NR	CSC, O	R, T	R	N, S, CR	IP, EL	D, A	NR	A, D	P/E/O, S/E/O	MR, O	CM/MR	NR	NR	MR-O
Sacramento County, Calif. (Others)	749,000	Peace Officer's Joint Council	125	(6/30/81) 1 yr.	NO	L	R	F	D, J	III	H; J	NR	CSC, O	T, D	NR	MR (N, CR, S)	IP, EL	D, A	NR	A, D	P/E/O, S/E/O	MR, O	CM/MR	NR	MR-O	MR-O
Saint Paul, Minn. (Supervisors)	290,000	None	3	(12/31/82) 2 yrs.	NO	L	U	F* *By Statute	D, J	III	I	NR	CSC, I	I, C	NR	MR	NR	NR	Y	Y	NR	NR	NR	NR	MR-S	NR
Saint Paul, Minn. (Rank & File)	290,000	None	550	(12/31/82) 3 yrs.	NO	N	U	F	D, J	IV	I	NR	CSC, I-D	I, C, D	NR	NR	NR	NR	Y	A	NR	NR	NR	NR	MR-O	NR
Saint Petersburg, Fla. (Rank & File)	250,000	Police Benevolent Assn.	338	(9/30/81) 2 yrs.	NO	L	R	F	D, J	II	III; J	Y	CSC, IV	I, T, D	NR	S, CR	NR	D, D	U, W	A, N, D	P/E/O, S/E/O T	MR	CM/MR	NEG/S	MR-S	MR-S
Saint Petersburg, Fla. (Supervisors)	250,000	Police Benevolent Assn.	66	(9/30/81) 2 yrs.	NO	L	R	F	D, J	II	III; J	Y	CSC, IV	I, T, D	NR	S, CR	NR	D, D	U, W	A, N, D	P/E/O, S/E/O T	MR	CM/MR	NEG/S	MR-S	MR-S
Salem, Ore.	90,400	Salem Police Assn.	95	(6/30/80) 2 yrs.	NO	L	U	F	D, J	III	I; J, MR	NR	CSC, O	C, I, D	R	S, CR	JT, IP, EL	NR	NR	A, D	P/E/O, T	NR	Y	NEG	MR-O	MR-O
Salt Lake City, Utah	159,759	International Brotherhood of Police Officers, Local 470	400	(8/22/81) 3 yrs.	NO	N	R	NR	NR	V	NR	NR	CSC, I	R, D, T	NR	MR, CR	JT, IP	D, DI	W	A, N, D	S/Q/O	NR	NR	NR	MR-O	MR-S
San Antonio, Texas	813,500	San Antonio Police Officer's Assn.	1115	(9/30/81) 1 yr.	NO	L	I	F	D, J	II	III; J, O	Y	CSC, III	NR	NR	(S)	IP, JT	D	U, W	NR	P/Q/O, S/Q/O T	MR, S	CM/MR	NEG	NR	MR-S
San Bernadino, Calif. (Rank & File)	109,000	Public Employees Assn., Police Chapter	191	(9/1/81) 3 yrs.	NO	B	R	C	D	IV	I	Y	CSB, I	I	NR	NR	IP, TR	NR	W	Y	P/Q/O, S/O/O T	MR, (S), P	CM/(N + C), GR	NEG	NR	NR
San Bernadino, Calif. (Supervisors)	109,000	None	4	(9/1/81) 3 yrs.	NO	B	R	C	D	IV	I	Y	CSB, I	I	NR	NR	TR	NR	W	Y	P/Q/O, S/O/O T	MR, (S), P	CM/(N + C), GR	NEG	NR	NR
San Diego, Calif.	845,000	San Diego Police Officer's Assn.	1238	(6/30/81) 1 yr.	YES	N	R	C	D	V	I; J	Y	IV	T, D	NR	S	IP, JT, TR	NR	NR	A	P/E/O, S/E/O	MR	CM/N	Y	NR	MR-O
San Diego County Calif.	454,000	Deputy Sheriff's Assn.	803	(7/1/81) 2-1/2 yrs.	NO	B	R	C	D	NR	I	Y	CSC I	D, I	NR	CR, N, S	IP	NR	NR	A, D	P/E/O, T	Y	D, GR	NR	NR	NR
San Mateo County Calif.	574,000	Deputy Sheriff's Organization	316	(12/31/81) 2 yrs.	NO	N	R	F	D, J	V	III; J	NR	Board of Supervisors O; CSC III	T	NR	S, CR	IP, JT, TR, EL	D	NR	A, N, D	P/E/O, S/Q/D	MR, (S)	CM/(NC)	NR	MR-S	NR
Santa Ana, Calif.	189,000	Santa Ana Police Benevolent Assn.	347	(6/30/81) 2 yrs.	NO	B	I	C	D	II	I; J	NR	Personnel Board I; CSC, O	R, I, T	NR	MR, CR	JT, IP, TR	D, DI, A/L	W	A, N, D	P/Q/O T	MR	CM/MR, GR	S	MR-S	MR-S
Santa Monica, Calif.	90,000	Santa Monica Police Officer's Assn.	130	(6/30/82) 3 yrs.	YES	B	R	C/O	NR	III	I; MR	NR	CSC I-D	C, D, I	R	MR	TR, IP	DI, D	U, W	A, N, D	NR	MR	NR	Y	NR	MR-O
Seattle, Wash.	498,000	Seattle Police Officer's Guild	980	(8/31/80) 2 yrs.	NO	B	U	C	NR	III	I; J	Y	CSC I	I, C, D	NR	(S)	NR	D	U, W	Y	P/Q/O	MR, S	CM/(NC)	NEG	MR-S	MR-O
Southfield, Mich.	75,500	Police Officer's Assn.	NR	(6/30/80) 2 yrs.	NR	B	R	F	D; J	II	Y	NR	CSC I	T, D	NR	MR, CR	IP	D, DI, A	NR	A, N, D	P/Q/D	MR, (S), P, O	CM/MR	NEG	MR-S	MR-S
Spokane, Wash. (Rank & File)	170,846	Spokane Police Guild	234	(12/31/80) 2 yrs.	NO	N	I	A	D; J	III	IV; MR	NR	CSC I	C, D	NR	MR	TR	D, DI, A/L	U, W	Y	P/E/O, P/Q/O	MR, S, (S)	NR	NR	MR-O	NR
Spokane, Wash. (Supervisors)	170,846	Spokane Captains and Lieutenants Assn.	16	(12/31/81) 2 yrs.	NO	N	I	A	D, J	III	IV; MR	NR	CSC I	C, D	G	MR	TR	D, DI, A/L	U, W	Y	Y	NR	NR	NR	MR-O	NR
Springfield, Mass. (Rank & File)	170,000	IBPO Local #364	400	(12/31/81) 2 yrs.	NO	L	U	F	J	IV	III; J	Y	CSC; I Police Commission II	I, C	NR	NR	IP	NR	NR	Y	P/Q/D, S/E/O	MR, (S)	Y	NEG	MR-S	Y

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	Date and Term of Contract	Job Action	Grievance Procedure				Management Rights	Discipline	Police Officers Bill of Rights	Civil Service/Third Party Entities	Duration	Cost of Living Adjustments	Reductions in Force	Training and Education	No Strike Clauses	Zipper Clauses	Sick Leave	Seniority	Assignments and Transfers	Rules and Regulations	Maintenance of Standards	Staffing Requirements	Contracting Out
						Definition	Procedure	Final Step	Other																	
Honolulu, Hawaii	729,100	Hawaii Organization of Police Officers	1,400	(6/30/81) 2 yrs.	YES	L	U	F	D, J	Y	II; J	Y	O	C, D	NR	S	EL, JT	D, DI, A NG	U, W	NR	S/E/D, P/E/D, T P/Q/O	O, (S)	CM/(N&C) D	N, C	NR	NR
Huntington Beach, Calif.	175,000	Huntington Beach Police Officers Assn.	230	(9/30/80) 2 yrs.	YES	NR	NR	NR	NR	V	NR	NR	NR	NR	NR	NR	IP, TR	NR	NR	A	NR	NR	CM/MR	C	MR-D	MR-S
Indianapolis, Ind.	440,000	F.O.P.	1,050	(12/31/82) 2 yrs.	NO	B	I	C	D	III	I; J	NR	NR	T, R, D	R	MR	IP	D	Y	Y	NR	MR	CM/MR, D	NR	MR-S	NR
Jacksonville, Fla.	591,282	F.O.P.	881	(10/30/80) 3 yrs.	NO	L	Z	F	D, J	V	I; J	Y	CSB I, D	T, R, I, D	NR	S	JT, IP	D, DI, G	U, W	A, D, N	P/E/D, S/E/O	NR	Y	NEG/S	NR	MR-S
Jefferson County, Ky.	695,055	F.O.P. Lodge #14	430	(6/30/81) 2 yrs.	NO	L	R	C/A	D	III	I	NR	Fiscal Court I	D, T	NR	MR, CR	TR	D, L	W	Y	NR	MR	CM/MR, D	MR	MR-S	MR-O
Lansing, Mich.	133,000	F.O.P. Lodge #141	214	(7/1/80) 2 yrs.	YES	L	U	F	D, J	II	II, J	Y	NR	C, D	R	S, CR	JT, IP	D	U, W	A, N, D	P/E/D, S/E/O, T	MR	CM/MR D, N, GR	NR	MR-S	MR-S
Lincoln, Neb.	150,000	International Brotherhood of Police Assn.	220	(8/31/80) 2 yrs.	NO	N	I	F	D, J	I	II; J, O	Y	Personnel Bd II	C, D	NR	MR, CR	EL	L, D, DI	NR	A, N, D	S/O/O	MR	CM/MR D, GR	Y	MR-S	NR
Livonia Mich.	104,000	Livonia Police Officers Assn.	100	(11/30/82) 3 yrs.	NO	L	U	F	D, J	III	III; J	Y	CSC II	C, D, I	R	CR, S	JT, IP, TR	D, DI	NR	A	P/E/D, P/Q/D	MR, (S), P	MR	NEG	MR-O	MR-O
Long Beach, Calif.	351,000	Police Officer's Assn. AFL/CIO	610	(6/30/80) 3 yrs.	NO	B	U	A/C	NR	IV	I	NR	CSC I—D	C, D	NR	NR	IP	NR	Y	NR	S/E/O	MR, S	CM/(N + C) GR	NEG	Y	NR
Los Angeles, Calif. (Captains & Commanders)	2,957,052	Los Angeles Police Protective League	99	(6/30/80) 1 yr.	NO	B	I	F	D, J	NR	NR	NR	CSC, I; ERB, IV	R, D, T	NR	NR	JT, EL	NR	NR	A	NR	Y	GR	NR	NR	NR
Los Angeles, Calif. (Rank & File)	2,957,052	Los Angeles Police Protective League	6,614	(6/30/80) 1 yr.	YES	B	I	F	D, J	NR	NR	NR	CSC, I; ERB, IV	R, D, T	NR	NR	NR	NR	NR	A	NR	NR	GR	NR	NR	NR
Los Angeles County, Calif. (Non-supervisory)	7,225,000	Assn. for LA Deputy Sheriffs	4,399	(6/30/81) 1-5/6 yrs.	NO	B	U	F/A	D, J	V	I	Y	CSC I—D	R, T, D	NR	NR	JT, IP	D, A/L	W	Y	NR	NR	CM/NEG GR	NR	NR	NR
Los Angeles County, Calif. (Middle Supervisory)	7,225,000	Professional Peace Officers Assn.	1,300	(6/30/81) 1-5/6 yrs.	NO	B	R	F/A	D, J	V	I	Y	CSC I	T, D	NR	NR	IP, JT	D, A/L	W	Y	NR	NR	GR	NR	NR	NR
Los Angeles County, Calif. (High Supervisory)	7,225,000	Professional Peace Officers Assn.	72	(6/30/81) 3-5/6 yrs.	NO	B	R	F/A	D, J	V	I	Y	CSC I	T, D	NR	NR	IP, JT	D, A/L	W	Y	NR	NR	GR	NR	NR	NR
Macomb County, Mich. (Rank & File)	670,000	Macomb County Deputy Sheriff's Assn.	200	(12/31/82) 3 yrs.	NO	L	R	F	D, J	IV	III	Y	II, III CSC	R, C, D	NR	Y	EL, IP	D, DI	NR	A, N, D	P/E/D, P/Q/D S/E/O, S/Q/D, T	MR, P/(S) O/S	CM/(N, C) D	NR	MR-S	NR
Macomb County, Mich. (Command)	670,000	AFSCME Local #1917	37	(12/31/82) 3 yrs.	NO	L	R	F	D, J	V	III	Y	II, III CSC	R, C, D	NR	Y	EL, IP	D, DI	NR	A, N, D	S/E/O, S/Q/D, T	MR, P	D	NR	MR-S	NR
Madison, Wisc. (Rank & File)	173,051	Madison Professional Police Officer's Assn.	265	(12/19/81) 2 yrs.	NO	L	R	F	J	II	III, J	NR	IV	D, I, T	NR	MR	IP, JT	D, DI, A, L	U	A, N, D	P/Q/O, S/E/O	MR, P, (S)	CM/N	NEG/S	MR-S	MR-S
Madison, Wisc. (Supervisors)	173,051	Assn. of Madison Police Supervisors	NR	(12/31/82) 3 yrs.	NO	N	R	F	J	II	I	NR	NR	I, T, D	NR	MR	NR	D, DI, A, L	Y	A, N, D	S/Q/D	MR	CM/MR	NR	MR-O	MR-S
Memphis, Tenn.	750,000	Memphis Police Assn.	1,100	(6/30/83) 3 yrs.	NO	L	R	A	D, J	I	I; J	Y	CSC IV	S, T	NR	MR	TR, JT IP, EL	A, L, D, DI	U, W	Y	P/Q/D, S/Q/D S/E/O, T	MR, (S) P	CM/MR D	NR	MR-S	MR-S
Miami, Fla.	380,000	F.O.P.	700	(9/30/81) 3 yrs.	NO	L	I	F/C	D, J	I	I; J	Y	CSC O	I, T, D	NR	NR	NR	D, S, DI, NG, A	Y	A	NR	MR	D	NEG	MR-O	MR-S
Milwaukee, Wisc (Non-supervisors)	616,000	Milw. Police Assn. AFL/CIO—Local #21	1,730	(12/31/80) 2 yrs.	NO	B	I	F	J	II	II	NR	Bd. of Fire & Police, Commissioners, I	I, T, D	NR	NS	JT, IP TR	D, DI, A/L	U, W	Y	P/E/D, T	MR	CM/(MR, NEG) GR	Y	NR	MR-S
Milwaukee, Wisc. (Supervisors)	616,000	Milw. Police Supervisors' Organization	250	(12/31/80) 2 yrs.	NO	NR	NR	NR	NR	II	IV; MR	NR	NR	I, T, D	NR	MR	IP, TR	D, DI, A/L	U, W	Y	NR	MR	CM/MR	Y	MR-O	MR-S
Milwaukee County, Wisc. (Deputy Sheriffs)	938,638	Milwaukee Deputy Sheriffs' Assn.	389	NONE	NO	L	I	F	D, J	III	II	NR	CSC O	I, C	NR	N, S	IP	D, A	Y	Y	P/Q/O, P/E/O S/E/O, T	MR, O, (S)	CM/MR	S	MR-S	MR-O
Minneapolis, Minn.	375,000	Police Officers' Federation	725	(12/31/80) 2 yrs.	NO	L	I	F	D, J	IV	IV; J	NR	CSC IV	CD	NR	NR	JT	D, A, DI	Y	Y	NR	MR	CM/(N, C)	NR	NR	NR

City or County	Population	Name of Bargaining Unit	Number of Employees in Bargaining Unit	Date and Term of Contract	Job Action	Grievance Procedure				Management Rights	Discipline	Police Officers Bill of Rights	Civil Service/Third Party Entities	Duration	Cost of Living Adjustments	Reductions in Force	Training and Education	No Strike Clauses	Zipper Clauses	Sick Leave	Seniority	Assignments and Transfers	Rules and Regulations	Maintenance of Standards	Staffing Requirements	Contracting Out
						Definition	Procedure	Final Step	Other																	
Springfield, Mass. (Supervisors)	170,000	None	50	(6/30/82) 2-1/2 yrs.	NO	L	U	F	J	IV	IV	NR	CSC I; Police Com. II	R, C, I	NR	NR	IP	D	NR	Y	P/Q/D	Y	NR	NEG	NR	Y
Stamford, Conn.	102,400	Stamford Police Assn.	280	(6/30/81) 2 yrs.	NO	B	R	F	D	NR	II; J	Y	CSC O	C	NR	NR	IP, TR	D	W	Y	P/E/D, S/E/O	P, S	NR	NR	Y	NR
Stockton, Calif.	131,000	Police Officers' Assn.	214	(3/31/80) 1 yr.	NO	B	R	F	D	NR	III; J	NR	CSC III	C, D	NR	CR, S	IP	D	W	A, N, D	P/E/D, P/Q/D	NR	CM/NEG, GR	NR	NR	NR
Sunnyvale, Calif.	107,000	Sunnyvale Public Safety Officers Assn.	190	(7/3/82) 3 yrs.	NO	NR	NR	NR	NR	Y	NR	NR	NR	C, R	NR	NR	JT, EL	NR	U, W	NR	NR	NR	NR	NEG	Y	NR
Syracuse, NY	173,400	Police Benevolent Assn.	460	(12/31/80) 2 yrs.	NO	L	I	F,	J	II	III	Y	CSC III	C, D	NR	NR	JT	D	W	Y	P/Q/D, S/E/D	MR, (S), O	CM/MR	NR	MR-S	MR-O
Tacoma, Wash.	158,500	Tacoma Police Union Local #6	243	(12/31/81) 2 yrs.	NO	N	I	F	D, J	II	I	NR	CSC O	NR	G	MR, CR	NR	D, DI, A	Y	Y	P/E/O	MR	CM/N	Y	NR	MR-S
Tampa, Fla.	254,000	Hillsborough County Police Benevolent Assn.	509	(9/30/82) 3 yrs.	NO	L	U	F	D, J	V	III; J	Y	CSC III	C, D	NR	S, CR	JT	D, NG, L	U, W	A, N, D	P/Q/O, S/E/O	MR, S	CM/(NC) GR, O	Y	MR-O	MR-S
Toledo, Ohio (Command)	350,000	Toledo Command Officers Assn.	157	(6/30/82) 3 yrs.	YES	O	R	O	D	IV	I	Y	CSC I-D	C, D, I	R	S	NR	Y	NR	A, N, D	P/E/O, P/E/O S/E/O, S/O/O	MR, S	CM/N, GR	NR	MR-S	NR
Toledo, Ohio (Police Officers)	350,000	Toledo Police Patrolmen's Assn. AFL/CIO Local #10	508	(6/30/82) 3 yrs.	YES	L	R	F	O	Y	I	Y	CSC I-D	I, C	G	S, N, CR	JT	D	NR	A, N, D	P/Q/D, P/E/O S/E/O, S/E/O S/Q/O	MR, (S), P	CM/N, GR, D	NR	NR	NR
Topeka, Kan.	123,000	F.O.P. Lodge #3	225	(12/31/81) 2 yrs.	NO	NR	NR	NR	NR	III	IV; J	NR	CSC O	T	R	MR, CR	NR	NR	Y	Y	NR	MR	NR	NR	NR	MR-O
Trenton, N.J.	104,600	Police Benevolent Assn.	326	Extended from 1971 with Amendments	NO	B	R	F	D	III	III; J	Y	CS Appeal IV	C, D	NR	MR	NR	Y	Y	Y	NR	MR	CM/MR, GR	NR	NR	NR
Tucson, Ariz.	313,000	F.O.P.	488	(4/21/83) 3 yrs.	NO	N	R	A/C, F	D	I	I; J	Y	CSC I	C, D, I	NR	MR, CR	JT	D	NR	NR	S/E/O	MR	Y	NEG	MR-S	MR-S
Tulsa County, Okla.	366,000	F.O.P.	618	(6/30/81) 1 yr.	NO	L	R	F	J	II	I	Y	CSC I-D	C, D	NR	S	IP, EL	A, D	NR	A, N, D	P/E/O, P/Q/O S/Q/O, T	MR, S	CM/MR	NR	MR-S	NR
Ventura County, Calif. (Sheriffs)	488,000	Ventura County Sheriff's Assn.	408	(7/4/81) 2 yrs.	NO	B	R	C	D	III	I; J	NR	CSC I	T, D, I	NR	CR, S	IP, TR, EL	A, D	Y	A, N, D	P/E/O	MR, O	NR	C	NR	MR-O
Ventura County, Calif. (Supervisors)	488,000	Ventura County Sheriff's Assn.	27	(7/4/81) 2 yrs.	NO	B	R	C	D	III	I; J	NR	CSC I	T, D, I	NR	CR, S	IP, TR, EL	A, D	Y	N, D	P/E/O	O	GR	C, N	NR	MR-O
Washington, D.C.	635,000	International Brotherhood of Police Officers Local #442	3650	(9/31/81) Extended from 5/30/75	NO	L	R	F	D, J	I	I; J	Y	CSC O	I, R, T	NR	MR, CR	NR	D, DI, A/L	U, W	NR	S/E/O	MR	CM/MR	NR	MR-S	NR
Wayne County, Mich.	NR	AFL/CIO Local #502	600	(11/30/79) 2-1/2 yrs.	NR	B	R	F	D, J	IV	II; J	Y	Wayne County LRB, II	C, D	R	S	EL, TR, JT	A, D, DI, G	U, W	A, D	P/Q/D, P/E/D P/E/O, S/E/O	O, (S)	CM/MR, CM/NEG	NEG/S	Y	NR
Westmoreland County, Pa. (County Park Police)	400,000	Teamsters Local #30	12	(12/31/81) 1-1/2 yrs.	NO	L	I	F	D, J	III	II	NR	NR	I, C, D	NR	S, N	JT, TR	D, DI	NR	A, N, D	P/E/O, S/Q/O T	NR	NR	NR	Y	NR
White Plains, N.Y.	50,000	White Plains Police Benevolent Assn.	206	(6/30/81) 3 yrs.	NO	N	R	A/F	D	III	I; J	NR	CSC O	I, T	NR	NR	TR	Y	NR	Y	S/E/D, S/E/O	MR	CM/MR	NEG	MR-S	NR
Wichita, Kansas	261,000	F.O.P. Lodge #5	305	(12/30/81) 3 yrs.	NO	L	R	C	NR	III	I; O, J	Y	NR	T, D, I	R	CR, (S)	JT, EL, IP	D	NR	A, N, D	P/Q/D, T	MR, P	CM/(N + C)	NR	NR	MR-O
Yonkers, N.Y. (Rank & File)	200,000	Police Benevolent Assn.	418	(6/30/80) 2 yrs.	NO	L	I	F/C	D	II	III; MR	NR	CSC O	T	NR	NR	JT	NR	NR	A	NR	MR	CM/(MR, N + C)	S, N, C	MR-S	MR-S
Yonkers, N.Y. (Supervisors)	200,000	Police Captains, Sergeants, Lieutenants, Benevolent Assn.	88	(6/30/80) 2 yrs.	NO	L	U	F/C	D	III	III; MR	Y	CSC O	T, I	NR	NR	JT	NR	NR	Y	NR	MR	CM/(N + C)	NEG	MR-S	MR-S